

1 amended complaint. (Id.)

2 Plaintiff proceeded to file four motions for extension of time to file a second
3 amended complaint. (ECF Nos. 17, 19, 21, 24.) The motions were granted, but in
4 granting the fourth motion, filed January 30, 2017 (ECF No. 24), the Court warned
5 Plaintiff that further extensions of time were unlikely. (ECF No. 25.) Plaintiff was ordered
6 to file an amended complaint but also was given the option of notifying the Court of his
7 willingness to proceed only on the claims previously found cognizable. (Id.)

8 Plaintiff then failed to timely file a second amended complaint, notify the Court of
9 his willingness to proceed only on the cognizable claims or otherwise respond to the
10 Court's order. (Id.) Accordingly, on April 20, 2017, the Court issued an order to show
11 cause for failure to obey a court order and failure to prosecute. (ECF No. 26.) Plaintiff
12 then filed a fifth motion for extension of time on May 11, 2017. (ECF No. 27.) The Court
13 denied the motion and ordered Plaintiff, within twenty-one days, to either file an
14 amended complaint or advise the Court whether he wishes to proceed on the excessive
15 force claim previously found cognizable. (ECF No. 28.) Plaintiff was advised that the
16 failure to timely respond would result in dismissal of the action for failure to obey a court
17 order and failure to prosecute. (Id.) The twenty-one day deadline passed without Plaintiff
18 either filing an amended complaint, stating his willingness to proceed only on cognizable
19 claims, or otherwise responding to the Court's order.

20 Local Rule 110 provides that "failure of counsel or of a party to comply with these
21 Rules or with any order of the Court may be grounds for imposition by the Court of any
22 and all sanctions . . . within the inherent power of the Court." District courts have the
23 inherent power to control their dockets and, "in the exercise of that power, they may
24 impose sanctions including, where appropriate, default or dismissal." Thompson v.
25 Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with
26 prejudice, based on a party's failure to prosecute, failure to obey a court order, or failure
27 to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
28 (dismissing for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-

1 61 (9th Cir. 1992) (dismissing for failure to comply with an order requiring amendment of
2 a complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissing for
3 failure to comply with local rule requiring pro se plaintiffs to keep court apprised of
4 address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissing
5 for failure to comply with a court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th
6 Cir. 1986) (dismissing for lack of prosecution and failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to obey
8 a court order, or failure to comply with local rules, the Court must consider several
9 factors: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need
10 to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
11 favoring disposition of cases on their merits; and (5) the availability of less drastic
12 alternatives. Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833
13 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

14 In the instant case, the public's interest in expeditiously resolving this litigation
15 and the Court's interest in managing its docket weigh in favor of dismissal. The third
16 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a
17 presumption of injury arises from the occurrence of unreasonable delay in prosecuting
18 this action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor –
19 public policy favoring disposition of cases on their merits – is greatly outweighed by the
20 factors in favor of dismissal discussed herein. With respect to the availability of lesser
21 sanctions, at this stage in the proceedings there is little available which would constitute
22 a satisfactory lesser sanction while preserving scarce Court resources. Plaintiff has not
23 paid the filing fee for this action and is likely unable to pay, making monetary sanctions
24 of little use. Finally, the order to show cause warned Plaintiff that his failure to comply
25 may result in dismissal, with prejudice. (ECF No. 26.) Thus, Plaintiff was on notice that
26 his failure to communicate with the Court could result in dismissal of his complaint.

27 Based on the foregoing, it is HEREBY ORDERED THAT:

28 1. The action is DISMISSED, with prejudice, for failure to comply with the

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Court's orders (ECF Nos. 16, 28) and failure to prosecute; and

2. The Clerk of Court is directed to terminate all pending motions and close the case.

IT IS SO ORDERED.

Dated: June 27, 2017

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE