



1 Accordingly, on March 7, 2016, the Court issued a second order requiring Plaintiff to file a consent or  
2 decline form within thirty (30) days. (ECF No. 14.) Plaintiff again failed to comply with that order.

3 On April 20, 2016, the Court issued a third order requiring Plaintiff to file a consent or decline  
4 form, or to otherwise show cause why this action should not be dismissed for failure to prosecute.  
5 (ECF No. 15.) The Court expressly warned Plaintiff that the failure to respond to that order “will result  
6 in dismissal of this action for failure to prosecute and failure to obey a court order.” (*Id.* at 2.)  
7 Plaintiff’s response to that order was due on or before May 9, 2016. However, as of the date of this  
8 order, Plaintiff has neither complied with the Court’s previous orders, nor otherwise communicated  
9 with the Court. Furthermore, Plaintiff’s consent or decline form is now nearly three (3) months  
10 overdue.

## 11 **II. Discussion**

12 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with any  
13 order of the Court may be grounds for imposition by the Court of any and all sanctions . . . within the  
14 inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n  
15 the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal.”  
16 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with  
17 prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to  
18 comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for  
19 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal  
20 for failure to comply with an order requiring amendment of complaint); Malone v. U.S. Postal Service,  
21 833 F.2d 128, 130-33 (9th Cir. 1987) (dismissal for failure to comply with court order).

22 In determining whether to dismiss an action, the Court must consider several factors: (1) the  
23 public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3)  
24 the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
25 merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423  
26 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988).

27 Here, the action has been pending for over six (6) months, and Plaintiff has been  
28 uncommunicative with the Court for nearly three (3) of those months. Despite multiple attempts to

1 communicate with Plaintiff, he has been non-responsive to the Court’s orders. The Court cannot  
2 effectively manage its docket if a party ceases litigating the case. Thus, both the first and second  
3 factors weigh in favor of dismissal.

4 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a  
5 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
6 Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). Because public policy favors disposition on  
7 the merits, the fourth factor usually weighs against dismissal. Pagtalunan v. Galaza, 291 F.3d 639, 643  
8 (9th Cir. 2002). However, “this factor lends little support to a party whose responsibility it is to move  
9 a case toward disposition on the merits but whose conduct impedes progress in that direction,” which  
10 is the case here. In re PPA, 460 F.3d at 1228.

11 Finally, the court’s warning to a party that failure to obey the court’s order will result in  
12 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;  
13 Malone, 833 at 132-133; Henderson, 779 F.2d at 1424. The Court’s April 20, 2016 order expressly  
14 warned Plaintiff that his failure to comply with that order would result in dismissal of this action, with  
15 prejudice, for failure to prosecute and failure to obey a court order. (ECF No. 15, p. 2.) Thus, Plaintiff  
16 had adequate warning that dismissal could result from his noncompliance. Also, at this stage in the  
17 proceedings there is little available to the Court which would constitute a satisfactory lesser sanction  
18 while protecting the Court from further unnecessary expenditure of its scarce resources. Plaintiff is  
19 proceeding in forma pauperis in this action, making monetary sanctions of little use, and the  
20 preclusion of evidence or witnesses is likely to have no effect given that Plaintiff has ceased litigating  
21 his case.

22 In summary, Plaintiff filed this action but is no longer prosecuting it. The Court cannot afford  
23 to expend resources resolving unopposed dispositive motions in a case which Plaintiff is no longer  
24 prosecuting.

### 25 **III. Conclusion and Recommendation**

26 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY  
27 RECOMMENDS that this action be dismissed, with prejudice, for failure to prosecute and for failure  
28 to obey a court order.

