

1 of record. (ECF No. 11.) On November 14, 2016, that order was returned to the Court with a notation
2 “undeliverable, paroled.”

3 Subsequently, on January 30, 2017, the Court issued an order to show cause why this action
4 should not be dismissed for the failure to prosecute. The order required a show cause response within
5 twenty (20) days. More than twenty (20) days have passed, and Plaintiff has not responded to the order
6 to show cause, or otherwise communicated with the Court.¹

7 **II.**
8 **DISCUSSION**

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

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

24 Here, the action has been pending for nearly one year. The Court’s October 26, 2016 order was
25 returned over three months ago, and Plaintiff’s change of address has been overdue for over a month.
26 Despite multiple attempts to communicate with Plaintiff, he has been non-responsive to the Court’s

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28 ¹ The United States Postal Service returned the order to show cause on February 13, 2017, as undeliverable. A notation on the envelope indicates that Plaintiff is paroled. However, Plaintiff has not notified the court of any change in his address. Absent such notice, service at a party’s prior address is fully effective. Local Rule 182(f).

1 orders. The Court cannot effectively manage its docket if a party ceases litigating the case. Thus, both
2 the first and second factors weigh in favor of dismissal.

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

10 Finally, the court’s warning to a party that failure to obey the court’s order will result in
11 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;
12 Malone, 833 at 132-133; Henderson, 779 F.2d at 1424. The Court’s January 30, 2017 order to show
13 cause expressly warned Plaintiff that his failure to comply with that order would result in dismissal of
14 this action. (ECF No. 12, p. 2.) Thus, Plaintiff had adequate warning that dismissal could result from
15 his noncompliance.

16 Also, at this stage in the proceedings there is little available to the Court which would
17 constitute a satisfactory lesser sanction while protecting the Court from further unnecessary
18 expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this action, making
19 monetary sanctions of little use, and the preclusion of evidence or witnesses is likely to have no effect
20 given that Plaintiff has ceased litigating his case.

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

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III.

CONCLUSION AND ORDER

Accordingly, it is HEREBY ORDERED that:

1. This action is dismissed for Plaintiff's failure to prosecute and failure to obey the Court's January 20, 2017 order (ECF No. 12); and
2. The Clerk of the Court is directed to terminate all pending deadlines and motions, and close this case.

IT IS SO ORDERED.

Dated: March 1, 2017



UNITED STATES MAGISTRATE JUDGE