



1 inherent power of the Court.” District courts have the inherent power to control their dockets and “[i]n  
2 the exercise of that power they may impose sanctions including, where appropriate, . . . dismissal.”  
3 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with  
4 prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to  
5 comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for  
6 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal  
7 for failure to comply with an order requiring amendment of complaint); Malone v. U.S. Postal Service,  
8 833 F.2d 128, 130-33 (9th Cir. 1987) (dismissal for failure to comply with court order).

9 In determining whether to dismiss an action, the Court must consider several factors: (1) the  
10 public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3)  
11 the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their  
12 merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779 F.2d 1421, 1423  
13 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

14 Here, Plaintiff’s amended complaint is overdue. Despite multiple attempts to communicate  
15 with Plaintiff, he has been non-responsive to the Court’s orders. The Court cannot effectively manage  
16 its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first and second  
17 factors weigh in favor of dismissal.

18 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a  
19 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.  
20 Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against  
21 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d 639,  
22 643 (9th Cir. 2002). However, “this factor lends little support to a party whose responsibility it is to  
23 move a case toward disposition on the merits but whose conduct impedes progress in that direction,”  
24 which is the case here. In re Phenylpropanolamine (PPA) Prods. Liab. Litig., 460 F.3d 1217, 1228 (9th  
25 Cir. 2006) (citation omitted).

26 Finally, the court’s warning to a party that failure to obey the court’s order will result in  
27 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;  
28 Malone, 833 at 132-133; Henderson, 779 F.2d at 1424. The Court’s June 20, 2017 order expressly

1 warned Plaintiff that his failure to file an amended complaint would result in a recommendation that  
2 the action be dismissed. (ECF No. 14, at p. 12). Plaintiff also was warned of the potential for  
3 dismissal, with prejudice, by the Court’s August 2, 2017 order to show cause. (ECF No. 16, at p. 2.)  
4 Thus, Plaintiff had adequate warning that dismissal could result from his noncompliance.

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

10 **III. Conclusion and Recommendations**

11 Accordingly, the Court HEREBY RECOMMENDS that this action be DISMISSED, with  
12 prejudice, for failure to state a claim, failure to obey the Court’s orders, and failure to prosecute this  
13 action.

14 These Findings and Recommendations will be submitted to the United States District Judge  
15 assigned to the case, as required by 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being  
16 served with these Findings and Recommendations, Plaintiff may file written objections with the Court.  
17 The document should be captioned “Objections to Magistrate Judge’s Findings and  
18 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may  
19 result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. Wilkerson  
20 v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir.  
21 1991)).

22  
23 IT IS SO ORDERED.

24 Dated: August 29, 2017

/s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE