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5	UNITED STAT	ES DISTRICT COURT
6	EASTERN DISTRICT OF CALIFORNIA	
7	WILLIAM JONES,	) Case No.: 1:16-cv-01378-DAD-BAM (PC)
8	Plaintiff,	FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSAL OF THIS
9	v.	ACTION, WITH PREJUDICE, FOR FAILURE TO STATE A CLAIM, FAILURE TO OBEY A
10	STUART SHERMAN, et al.,	COURT ORDER, AND FAILURE TO PROSECUTE
11	Defendants.	) (ECF Nos. 14, 16)
12		<ul> <li>FOURTEEN (14) DAY DEADLINE</li> </ul>
13		)
14		)
15	Plaintiff William Jones ("Plaintiff") is a state prisoner proceeding pro se in this civil rights	
16	action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge	
17	pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.	
18	I. Relevant Procedural History	
19	On June 20, 2017, the Court dismissed Plaintiff's complaint with leave to amend within thirty	
20	(30) days. (ECF No. 14). Plaintiff failed to file an amended complaint or otherwise respond to the	
21	Court's order.	
22	On August 2, 2017, the Court issued an order directing Plaintiff to show cause in writing	
23	within fourteen (14) days why this action should not be dismissed, with prejudice, for failure to state a	
24	claim, failure to obey a court order, and failure to prosecute. (ECF No. 16.) As of the date of this	
25	order, Plaintiff has not complied with or otherwise responded to the order to show cause.	
26	II. Discussion	
27	Local Rule 110 provides that "[f]ailure of a party to comply with these Rules or with any	
28	order of the Court may be grounds for imposition by the Court of any and all sanctions within the	
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1 inherent power of the Court." District courts have the inherent power to control their dockets and "[i]n the exercise of that power they may impose sanctions including, where appropriate, ... dismissal." 2 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with 3 prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to 4 comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for 5 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal 6 for failure to comply with an order requiring amendment of complaint); Malone v. U.S. Postal Service, 7 833 F.2d 128, 130-33 (9th Cir. 1987) (dismissal for failure to comply with court order). 8

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

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

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

Finally, the court's warning to a party that failure to obey the court's order will result in dismissal satisfies the "considerations of the alternatives" requirement. <u>Ferdik</u>, 963 F.2d at 1262; <u>Malone</u>, 833 at 132-133; <u>Henderson</u>, 779 F.2d at 1424. The Court's June 20, 2017 order expressly

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

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

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## III. **Conclusion and Recommendations**

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

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

23 IT IS SO ORDERED.

Dated: August 29, 2017

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<u> Isl Barbara A. McAuli</u>

UNITED STATES MAGISTRATE JUDGE