

1 response. (See Doc. 7-1 at 2, 4, explaining the applicable briefing deadlines.) Thus, Plaintiff was to file
2 his opening brief in this action no later than September 28, 2017. (*See id.*) However, Plaintiff failed to
3 file an opening brief, and did not request an extension of time.

4 On October 4, 2017, the Court issued an order to Plaintiff to show cause why the action should
5 not be dismissed for his failure to prosecute and failure to comply with the Court’s order. (Doc. 23) In
6 the alternative, Plaintiff was directed “to file an opening brief” within fourteen days of the date of
7 service. (*Id.* at 2)

8 Plaintiff filed a timely response to the Court’s order on October 16, 2017. (Doc. 24) In the
9 response, Plaintiff asserted his belief that his “case needs further evaluation since [his] condition is not
10 getting any better and [he is] taking new prescription medication for pain.” (*Id.* at 1) In addition,
11 Plaintiff reported that he has several upcoming appointments, and was awaiting appointments with
12 specialists. (*Id.* at 2) However, the Court noted that Plaintiff’s response addressed present events,
13 while this action is related to “the unfavorable decision issued on February 20, 2015 by an
14 administrative law judge on February 20, 2015.” (Doc. 25 at 2) Therefore, the Court again provided
15 Plaintiff with the standards for filing an opening brief—previously giving in its Scheduling Order—and
16 directed Plaintiff “to file an opening brief that complies with the briefing requirements . . . no later than
17 November 3, 2017.” (*Id.*, emphasis omitted) The Court explained that upon the receipt of the opening
18 brief, the order to show cause would be discharged. (*Id.*) Plaintiff was “reminded that failure to
19 comply with the Court’s order will result in the action being dismissed.” (*Id.*, emphasis omitted) To
20 date, Plaintiff has not filed an opening brief in the action.

21 **II. Failure to Prosecute and Obey the Court’s Orders**

22 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: “Failure of counsel or of a
23 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any
24 and all sanctions . . . within the inherent power of the Court.” LR 110. “District courts have inherent
25 power to control their dockets,” and in exercising that power, a court may impose sanctions including
26 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.
27 1986). A court may dismiss an action with prejudice, based on a party’s failure to prosecute an action
28 or failure to obey a court order, or failure to comply with local rules. *See, e.g. Ferdik v. Bonzelet*, 963

1 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order); *Malone v. U.S.*
2 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with a court order);
3 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to
4 comply with local rules).

5 **III. Discussion and Analysis**

6 To determine whether to dismiss an action for failure to prosecute and failure to obey a Court
7 order, the Court must consider several factors, including: “(1) the public’s interest in expeditious
8 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
9 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability
10 of less drastic sanctions.” *Henderson*, 779 F.2d at 1423-24; *see also Ferdik*, 963 F.2d at 1260-61;
11 *Thomson*, 782 F.2d at 831.

12 **A. Public interest and the Court’s docket**

13 In the case at hand, the public’s interest in expeditiously resolving this litigation and the
14 Court’s interest in managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*,
15 191 F.3d 983, 990 (9th Cir. 1999) (“The public’s interest in expeditious resolution of litigation always
16 favors dismissal”); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in
17 managing their dockets without being subject to noncompliant litigants). This Court cannot, and will
18 not hold, this case in abeyance based upon Plaintiff’s failure to comply with the Court’s orders and
19 failure to take action to prosecute in a timely manner. *See Morris v. Morgan Stanley & Co.*, 942 F.2d
20 648, 652 (9th Cir. 1991) (explaining a plaintiff has the burden “to move toward... disposition at a
21 reasonable pace, and to refrain from dilatory and evasive tactics”). Accordingly, these factors weigh
22 in favor of dismissal of the action.

23 **B. Prejudice to Defendants**

24 To determine whether Defendant has been prejudiced, the Court must “examine whether the
25 plaintiff’s actions impair the ... ability to go to trial or threaten to interfere with the rightful decision of
26 the case.” *Malone*, 833 F.2d at 131 (citing *Rubin v. Belo Broadcasting Corp.*, 769 F.2d 611, 618 (9th
27 Cir. 1985)). Significantly, a presumption of prejudiced arises when a plaintiff unreasonably delays the
28 prosecution of an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). Here, Plaintiff

1 has not filed an opening brief in the action, despite being provided information on the pleading
2 requirements, and has not taken further action to seek judicial review of the administrative action.
3 Accordingly, this factor weighs in favor of dismissal.

4 **C. Consideration of less drastic sanctions**

5 The Court “abuses its discretion if it imposes a sanction of dismissal without first considering
6 the impact of the sanction and the adequacy of less drastic sanctions.” *United States v. Nat’l Medical*
7 *Enterprises, Inc.*, 792 F.2d 906, 912 (9th Cir. 1986). However, the Ninth Circuit has determined that a
8 court’s warning to a party that his failure to obey could result in dismissal satisfies the “consideration
9 of alternatives” requirement. *See Malone*, 833 F.2d at 133; *Ferdik*, 963 F.2d at 1262. As the Ninth
10 Circuit explained, “a plaintiff can hardly be surprised” by a sanction of dismissal “in response to
11 willful violation of a pretrial order.” *Malone*, 833 F.2d at 133.

12 Here, the Court warned Plaintiff in the Scheduling Order that violations of the order “may
13 result in sanctions pursuant to Local Rule 110.” (Doc. 7-1 at 4) In the Order to Show Cause, the
14 Court informed Plaintiff that “sanctions including dismissal of an action” could be imposed for “a
15 party’s failure to prosecute an action or failure to obey a court order, or failure to comply with local
16 rules.” (Doc. 23 at 2) Finally, in the Order Directing Plaintiff to File an Opening Brief, the Court
17 advised Plaintiff “**failure to comply with the Court’s order will result in the action being**
18 **dismissed.**” (Doc. 25 at 2) Significantly, the Court need only warn a party once that the matter could
19 be dismissed. *Ferdik*, 963 F.2d at 1262; *see also Titus v. Mercedes Benz of North America*, 695 F.2d
20 746, 749 n.6 (3d Cir. 1982) (identifying a “warning” as an alternative sanction). Accordingly, the
21 repeated warnings to Plaintiff satisfied the requirement that the Court consider lesser sanctions, and
22 this factor weighs in favor of dismissal of the action. *See Ferdik*, 963 F.2d at 1262; *Henderson*, 779
23 F.2d at 1424; *Titus*, 695 F.2d at 749 n.6.

24 **D. Public policy**

25 Given Plaintiff’s failure to prosecute the action and failure to comply with the Court’s orders,
26 the policy favoring disposition of cases on their merits is outweighed by the factors favoring dismissal.
27 *See Malone*, 833 F.2d at 133, n.2 (explaining although “the public policy favoring disposition of cases
28 on their merits . . . weighs against dismissal, it is not sufficient to outweigh the other four factors”).

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IV. Order

Plaintiff failed to comply with the Court’s Scheduling Order requiring the filing of an opening brief (Doc. 7-1) as well as its orders dated October 4, 2017 (Doc. 23) and October 19, 2017 (Doc. 25).

As a result, Plaintiff has also failed to take any action to prosecute this action.

Based upon the foregoing, **IT IS HEREBY ORDERED:**

1. This action is **DISMISSED** without prejudice; and
2. The Clerk of Court is **DIRECTED** to close the action.

IT IS SO ORDERED.

Dated: November 7, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE