

1 warned Plaintiff that failure to comply with its order “may result in dismissal of this action pursuant to
2 Local Rule 110.” (*Id.*, emphasis omitted) However, Plaintiff failed to comply with the Court’s order.

3 On October 16, 2017, the Court issued an order to Plaintiff to show cause why the action
4 should not be dismissed for his failure to prosecute and failure to comply with the Court’s order.
5 (Doc. 20) In the alternative, Plaintiff was directed “to file written notification of his intent to
6 prosecute this action” within two weeks of the date of service. (*Id.* at 2) To date, Plaintiff has failed
7 to comply with or otherwise respond to the Court’s order.

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

9 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: “Failure of counsel or of a
10 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any
11 and all sanctions . . . within the inherent power of the Court.” LR 110. “District courts have inherent
12 power to control their dockets,” and in exercising that power, a court may impose sanctions including
13 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.
14 1986). A court may dismiss an action with prejudice, based on a party’s failure to prosecute an action
15 or failure to obey a court order, or failure to comply with local rules. *See, e.g. Ferdik v. Bonzelet*, 963
16 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order); *Malone v. U.S.*
17 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with a court order);
18 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to
19 comply with local rules).

20 **III. Discussion and Analysis**

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

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

28 In the case at hand, the public’s interest in expeditiously resolving this litigation and the

1 Court's interest in managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*,
2 191 F.3d 983, 990 (9th Cir. 1999) ("The public's interest in expeditious resolution of litigation always
3 favors dismissal"); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in
4 managing their dockets without being subject to noncompliant litigants). This Court cannot, and will
5 not hold, this case in abeyance based upon Plaintiff's failure to comply with the Court's orders and
6 failure to take action to prosecute in a timely manner. *See Morris v. Morgan Stanley & Co.*, 942 F.2d
7 648, 652 (9th Cir. 1991) (explaining a plaintiff has the burden "to move toward... disposition at a
8 reasonable pace, and to refrain from dilatory and evasive tactics"). Accordingly, these factors weigh
9 in favor of dismissal of the action.

10 **B. Prejudice to Defendants**

11 To determine whether Defendant has been prejudiced, the Court must "examine whether the
12 plaintiff's actions impair the ... ability to go to trial or threaten to interfere with the rightful decision of
13 the case." *Malone*, 833 F.2d at 131 (citing *Rubin v. Belo Broadcasting Corp.*, 769 F.2d 611, 618 (9th
14 Cir. 1985)). Significantly, a presumption of prejudiced arises when a plaintiff unreasonably delays the
15 prosecution of an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). Here, Plaintiff
16 has not taken any action to prosecute the action, despite being ordered by the Court to indicate his
17 intent to prosecute. Accordingly, this factor weighs in favor of dismissal.

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

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

26 Here, the Court warned Plaintiff that the failure to comply with its order could "**result in**
27 **dismissal of this action.**" (Doc. 19 at 3, emphasis in original) Again, in the Order to Show Cause,
28 the Court informed Plaintiff that "sanctions including dismissal of an action" could be imposed for "a

1 party's failure to prosecute an action or failure to obey a court order, or failure to comply with local
2 rules." (Doc. 20 at 2) Significantly, the Court need only warn a party once that the matter could be
3 dismissed for failure to comply to satisfy the requirements of Rule 41. *Ferdik*, 963 F.2d at 1262; *see*
4 *also Titus v. Mercedes Benz of North America*, 695 F.2d 746, 749 n.6 (3d Cir. 1982) (identifying a
5 "warning" as an alternative sanction). Accordingly, the warnings to Plaintiff satisfied the requirement
6 that the Court consider lesser sanctions, and this factor weighs in favor of dismissal of the action. *See*
7 *Ferdik*, 963 F.2d at 1262; *Henderson*, 779 F.2d at 1424; *Titus*, 695 F.2d at 749 n.6.

8 **D. Public policy**

9 Given Plaintiff's failure to prosecute the action and failure to comply with the Court's orders,
10 the policy favoring disposition of cases on their merits is outweighed by the factors in favor of
11 dismissal. *See Malone*, 833 F.2d at 133, n.2 (explaining that although "the public policy favoring
12 disposition of cases on their merits . . . weighs against dismissal, it is not sufficient to outweigh the
13 other four factors").

14 **IV. Order**

15 Plaintiff failed to comply with the Court's orders dated October 2, 2017 (Doc. 19) and October
16 16, 2017 (Doc. 20), despite warnings that the action may be dismissed for failure to respond. In
17 addition, Plaintiff has failed to take any action to prosecute this action.

18 Based upon the foregoing, the Court **ORDERS**:

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

21
22 IT IS SO ORDERED.

23 Dated: November 3, 2017

/s/ Jennifer L. Thurston
24 UNITED STATES MAGISTRATE JUDGE