

1 **failure to prosecute as well as his failure to obey the Court’s order and the Local Rules.’**

2 (*Id.*, 1:25-2:1 (emphasis in original).) More than twenty-one (21) days have passed from the
3 service of Defendants’ motion without Plaintiff having filed an opposition or a statement of non-
4 opposition.

5 Accordingly, on January 11, 2018, an order issued for Plaintiff to show cause within
6 twenty-one days (21) why this action should not be dismissed based on his failure to comply with
7 the Court’s November 28, 2017 order and for failure to prosecute this action. (Doc. 32.)
8 Alternatively, Plaintiff was allowed to file an opposition or statement of non-opposition. (*Id.*)
9 Plaintiff has neither complied with, nor responded to the November 28, 2017 Amended Second
10 Informational Order or to the January 11, 2018 order to show cause.

11 Local Rule 110 provides that “failure of counsel or of a party to comply with these Rules
12 or with any order of the Court may be grounds for the imposition by the Court of any and all
13 sanctions . . . within the inherent power of the Court.” District courts have the inherent power to
14 control their dockets and “in the exercise of that power, they may impose sanctions including,
15 where appropriate . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th
16 Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute
17 an action, failure to obey a court order, or failure to comply with local rules. *See, e.g. Ghazali v.*
18 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v.*
19 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
20 requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
21 (dismissal for failure to comply with local rules); *Malone v. U.S. Postal Service*, 833 F.2d 128,
22 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779
23 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with
24 local rules).

25 In determining whether to dismiss an action for lack of prosecution, failure to obey a court
26 order, or failure to comply with local rules, the Court must consider several factors: (1) the
27 public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket;
28 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on

1 their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831;
2 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*,
3 46 F.3d at 53.

4 The Court finds that the public's interest in expeditiously resolving this litigation and the
5 Court's interest in managing its ever burgeoning docket weigh in favor of dismissal. The third
6 factor, risk of prejudice to Defendants, also weighs in favor of dismissal, since a presumption of
7 injury arises from the occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air*
8 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition
9 of cases on their merits -- is greatly outweighed by the factors in favor of dismissal discussed
10 herein. Finally, a Court's warning to a party that his failure to obey the court's order will result in
11 dismissal satisfies the "consideration of alternatives" requirement. *Ferdik v. Bonzelet*, 963 F.2d at
12 1262; *Malone*, 833 at 132-33; *Henderson*, 779 F.2d at 1424. As noted above, the Court's order
13 requiring Plaintiff to file an opposition or statement of non-opposition to Defendants' motion for
14 summary judgment expressly warned that the action may be dismissed with prejudice for failure
15 to prosecute if Plaintiff failed to file an opposition or statement of non-opposition. (Doc. 29,
16 1:25-2:1.) The order to show cause issued on January 11, 2018, also required Plaintiff to explain
17 why dismissal should not be recommended based on his failure to prosecute this action, and
18 provided Plaintiff another opportunity to respond to Defendants' motion. (Doc. 32.) Thus,
19 Plaintiff had more than adequate opportunity to oppose Defendants' motion and sufficient
20 warning that dismissal may result from his noncompliance with the Court's orders.

21 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed with
22 prejudice based on Plaintiff's failure to obey the Court's orders of November 28, 2017, (Doc. 29),
23 and January 11, 2018, (Doc. 32).

24 These Findings and Recommendations will be submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within**
26 **twenty-one (21) days** after being served with these Findings and Recommendations, the parties
27 may file written objections with the Court. The document should be captioned "Objections to
28 Magistrate Judge's Findings and Recommendations." Failure to file objections within the

1 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
2 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: February 16, 2018

/s/ Sheila K. Olerto
UNITED STATES MAGISTRATE JUDGE

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