

1 Plaintiff filed his First Amended Complaint on January 5, 2017. (Doc. 8) Again the Court
2 found Plaintiff failed to allege facts to support his claims for violations of the Fourth and Fourteenth
3 Amendment by the named defendants. (Doc. 9 at 4-5) In addition, Plaintiff failed to clarify whether he
4 was seeking to challenge findings of the state court. (*Id.* at 8) Accordingly, the Court directed Plaintiff
5 to “provide information to the Court regarding the issues raised in the motion to suppress evidence and
6 the findings of the state court, sufficient to demonstrate that neither the *Rooker-Feldman* doctrine nor
7 the *Younger* abstention doctrine apply.” (*Id.* at 8-9, emphasis omitted) The Court informed Plaintiff he
8 would have “**one** final opportunity to amend his complaint,” and directed him to file a Second
9 Amended Complaint within thirty days of the date of service. (*Id.* at 9)

10 Because Plaintiff failed to file a Second Amended Complaint, on February 28, 2017, the Court
11 ordered him to show cause why the matter should not be dismissed. (Doc. 10) The Court informed
12 Plaintiff that the action may be dismissed for his failure to prosecute and failure to comply with the
13 Court’s orders. (*Id.* at 2) The Court ordered Plaintiff to show cause why the action should not be
14 dismissed, or in the alternative to file his amended complaint within fourteen days of the date of
15 service. (*Id.*) To date, Plaintiff has failed to comply with or otherwise respond to the Court’s order.

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

17 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: “Failure of counsel or of a
18 party to comply with . . . any order of the Court may be grounds for the imposition by the Court of any
19 and all sanctions . . . within the inherent power of the Court.” LR 110. “District courts have inherent
20 power to control their dockets,” and in exercising that power, a court may impose sanctions including
21 dismissal of an action. *Thompson v. Housing Authority of Los Angeles*, 782 F.2d 829, 831 (9th Cir.
22 1986). A court may dismiss an action with prejudice, based on a party’s failure to prosecute an action
23 or failure to obey a court order, or failure to comply with local rules. *See, e.g. Ferdik v. Bonzelet*, 963
24 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment
25 of complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
26 comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
27 failure to prosecute and to comply with local rules).

28 ///

1 **III. Discussion and Analysis**

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

8 In the case at hand, the public’s interest in expeditiously resolving this litigation and the Court’s
9 interest in managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d
10 983, 990 (9th Cir. 1999) (“The public’s interest in expeditious resolution of litigation always favors
11 dismissal”); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in
12 managing their dockets without being subject to noncompliant litigants). This Court cannot, and will
13 not hold, this action in abeyance given Plaintiff’s failure to comply with the deadlines set forth by the
14 Court and failure to prosecute. The risk of prejudice to the defendant also weighs in favor of dismissal,
15 since a presumption of injury arises from the occurrence of unreasonable delay in prosecution of an
16 action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

17 Notably, Plaintiff was warned that if he “**fail[ed] to file an amended complaint, the action**
18 **may be dismissed for failure to prosecute and failure to obey the Court’s order.**” (Doc. 9 at 9,
19 emphasis in original). In addition, in the Order to Show Cause, the Court reminded Plaintiff that an
20 action may be dismissed “based on a party’s failure to prosecute an action or failure to obey a court
21 order.” (Doc. 10 at 2) Thus, Plaintiff had adequate warning that dismissal would result from his
22 noncompliance with the Court’s orders and his failure to prosecute the action, and these warnings
23 satisfy the requirement that the Court consider less drastic measures. *Ferdik*, 963 F.2d at 1262;
24 *Henderson*, 779 F.2d at 1424. Indeed, the Court need only warn a party once that the matter would be
25 dismissed for failure to comply with its orders. *Id.*; *see also Titus v. Mercedes Benz of North America*,
26 695 F.2d 746, 749 n.6 (3d Cir. 1982) (identifying a “warning” as an alternative sanction).

27 Given these facts, the policy favoring disposition of cases on their merits is outweighed by the
28 factors in favor of dismissal. *See Malone*, 833 F.2d at 133, n.2 (explaining that although “the public

1 policy favoring disposition of cases on their merits . . . weighs against dismissal, it is not sufficient to
2 outweigh the other four factors”).

3 **IV. Findings and Recommendations**

4 Plaintiff failed to comply with, or otherwise respond to, the Court’s orders dated January 17,
5 2017 (Doc. 9) and February 28, 2017 (Doc. 10). Thus, Plaintiff has also failed to prosecute this action
6 through his failure to file a Second Amended Complaint.

7 Based upon the foregoing, the Court **RECOMMENDS**:

- 8 1. This action be **DISMISSED** without prejudice; and
- 9 2. The Clerk of Court be **DIRECTED** to close the action.

10 These Findings and Recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local
12 Rules of Practice for the United States District Court, Eastern District of California. Within 14 days
13 after being served with these Findings and Recommendations, Plaintiff may file written objections
14 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
15 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may
16 waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

17
18 IT IS SO ORDERED.

19 Dated: March 21, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE