

1 The deadline for Plaintiff to respond to the order to show cause has passed, and she has not
2 complied with the Court's order. Accordingly, the Court will recommend dismissal of this action
3 with prejudice.

4 **I. Failure to Prosecute and Failure to Obey a Court Order**

5 **A. Legal Standards**

6 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
7 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
8 within the inherent power of the Court.” District courts have the inherent power to control their
9 dockets and “[i]n the exercise of that power they may impose sanctions including, where
10 appropriate, . . . dismissal.” Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court
11 may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to
12 obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52,
13 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d
14 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment
15 of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987) (dismissal for
16 failure to comply with court order).

17 In determining whether to dismiss an action, the Court must consider several factors: (1) the
18 public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
19 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
20 their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779 F.2d 1421,
21 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

22 **B. Discussion**

23 Here, Plaintiff has failed to prosecute this action, and she has been otherwise non-responsive
24 to the Court's order directing her to move for default judgment. The Court cannot effectively
25 manage its docket if Plaintiff ceases litigating her case. Thus, the Court finds that both the first and
26 second factors weigh in favor of dismissal.

27 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
28 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.

1 Anderson v. Air W., 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
2 dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza, 291 F.3d
3 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose responsibility
4 it is to move a case toward disposition on the merits but whose conduct impedes progress in that
5 direction,” which is the case here. In re Phenylpropanolamine (PPA) Prod. Liab. Litig., 460 F.3d
6 1217, 1228 (9th Cir. 2006) (citation omitted).

7 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
8 sanctions satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;
9 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s March 2, 2018 order expressly
10 warned Plaintiff that her failure to respond to the order to show cause or otherwise comply would
11 result in sanctions. (Doc. 9 at pp. 2). Thus, Plaintiff had adequate warning that dismissal could
12 result from her noncompliance.

13 Additionally, at this stage in the proceedings there is little available to the Court that would
14 constitute a satisfactory lesser sanction while protecting the Court from further unnecessary
15 expenditure of its scarce resources. Plaintiff has not filed a motion for default judgment or
16 responded to the Court, making monetary sanctions of little use, and the preclusion of evidence or
17 witnesses is likely to have no effect given that Plaintiff has ceased litigating her case.

18 **II. Conclusion and Recommendation**

19 For the reasons explained above, the Court HEREBY RECOMMENDS that this action be
20 dismissed for failure to obey a court order and failure to prosecute.

21 These Findings and Recommendation will be submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
23 **days** after being served with these Findings and Recommendation, Plaintiff may file written
24 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
25 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
26 specified time may result in the waiver of the “right to challenge the magistrate’s factual findings”
27 on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
28 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

Dated: July 10, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE