

1 **II. Discussion**

2 **A. Legal Standards**

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

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

19 **B. Discussion**

20 Here, Plaintiff has not paid the filing fee for this action, which is grounds in and of itself
21 to dismiss this case. In addition, Plaintiff has not responded to the Court’s order requiring him to
22 pay the filing fee or submit an application to proceed *in forma pauperis*. The Court cannot
23 effectively manage its docket if Plaintiff ceases litigating this case. Thus, the Court finds that
24 both the first and second factors weigh in favor of dismissal.

25 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
26 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
27 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
28 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d

1 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
2 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
3 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Prod. Liab.*
4 *Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

5 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
6 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
7 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s June 29, 2018 order expressly
8 warned Plaintiff that the to comply would result in a recommendation to dismiss this action.
9 (Doc. No. 4, at 2.) Thus, Plaintiff had adequate warning that dismissal could result from
10 noncompliance.

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

16 **III. Conclusion**

17 Accordingly, the Clerk of the Court is HEREBY ORDERED to randomly assign a Fresno
18 District Judge to this action.

19 Further, for the reasons explained above, the Court HEREBY RECOMMENDS that this
20 action be dismissed, without prejudice, for the failure to pay the filing fee, for failure to obey a
21 court order, and failure to prosecute.

22 These Findings and Recommendation will be submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
24 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
25 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
26 Findings and Recommendation.”

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Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: October 13, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE