

1 *pauperis* (“IFP application”). (See docket). On July 25, 2022, the Court directed Plaintiff to
2 either submit an enclosed IFP application or pay the requisite filing fee within thirty days. (Doc.
3 No. 3). The thirty-day deadline has lapsed. Plaintiff has neither submitted the IFP application
4 nor paid the requisite filing fee. (See generally docket).

5 II. APPLICABLE LAW

6 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action
7 when a litigant fails to prosecute an action or fails to comply with a court order. See Fed. R. Civ.
8 P. 41(b); see *Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889 (9th Cir. 2019) (citations
9 omitted); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005)
10 (“[T]he consensus among our sister circuits, with which we agree, is that courts may dismiss
11 under Rule 41(b) *sua sponte*, at least under certain circumstances.”). Local Rule 110 similarly
12 permits the court to impose sanctions on a party who fails to comply with any order of the court.

13 Involuntary dismissal is a harsh penalty, but it “is incumbent upon the Court to manage its
14 docket without being subject to routine noncompliance of litigants.” *Pagtalunan v. Galaza*, 291
15 F.3d 639, 642 (9th Cir. 2002). Before dismissing an action under Fed. R. Civ. P. 41, the court
16 *must* consider: (1) the public interest in expeditious resolution of litigation; (2) the court’s need to
17 manage a docket; (3) the risk of prejudice to defendant; (4) public policy favoring disposition on
18 the merits; and (5) the availability of less drastic sanctions. See *Applied Underwriters*, 913 F.3d
19 at 889 (noting that these five factors “must” be analyzed before a Rule 41 involuntary dismissal)
20 (emphasis added); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (reviewing
21 five factors and independently reviewing the record because district court did not make finding as
22 to each factor); *but see Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000) (listing
23 the same five factors, but noting the court *need not* make explicit findings as to each) (emphasis
24 added); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (affirming dismissal of pro se §
25 1983 action when plaintiff did not amend caption to remove “et al” as the court directed and
26 reiterating that an explicit finding of each factor is not required by the district court).

27 III. ANALYSIS

28 The undersigned considers each of the above-stated factors and concludes dismissing this

1 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
2 days after being served with these findings and recommendations, a party may file written
3 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
4 Findings and Recommendations.” Parties are advised that failure to file objections within the
5 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
6 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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8 Dated: September 26, 2022


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE