

1 file an amended petition, the undersigned would recommend that the Petition be dismissed for the
2 above reasons and/or for his failure to prosecute this action. Therefore, the undersigned
3 recommends the district court dismiss this action without prejudice.

4 **I. APPLICABLE LAW**

5 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action
6 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court
7 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889
8 (9th Cir. 2019) (citations omitted). Local Rule 110 similarly permits the court to impose
9 sanctions on a party who fails to comply with the court’s Rules or any order of the court.

10 Before dismissing an action under Fed. R. Civ. P. 41, the court *must* consider: (1) the
11 public interest in expeditious resolution of litigation; (2) the court’s need to manage a docket; (3)
12 the risk of prejudice to defendant; (4) public policy favoring disposition on the merits; and (5) the
13 availability of less drastic sanctions. *See Applied Underwriters*, 913 F.3d at 889 (noting that
14 these five factors “must” be analyzed before a Rule 41 involuntarily dismissal) (emphasis added);
15 *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (reviewing five factors and
16 independently reviewing the record because district court did not make finding as to each); *but*
17 *see Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000) (listing the same, but
18 noting the court *need not* make explicit findings as to each) (emphasis added); *Ferdik v. Bonzelet*,
19 963 F.2d 1258, 1260 (9th Cir. 1992) (affirming dismissal of *pro se* § 1983 action when plaintiff
20 did not amend caption to remove “et al” as the court directed and reiterating that an explicit
21 finding of each factor is not required by the district court).

22 **II. ANALYSIS**

23 The undersigned considers the above-stated factors and concludes the majority of the
24 above factors favor dismissal in this case. The expeditious resolution of litigation is deemed to be
25 in the public interest. *Yourish v. California Amplifier*, 191 F.2d 983, 990-91 (9th Cir. 1999).
26 Turning to the second factor, the court’s need to efficiently manage its docket cannot be
27 overstated. This court has “one of the heaviest caseloads in the nation,” and due to the delay in
28 filling judicial vacancies, which was further exacerbated by the Covid-19 pandemic, it operates

1 under a declared judicial emergency. *See* Amended Standing Order in Light of Ongoing Judicial
2 Emergency in the Eastern District of California. The court’s time is better spent on its other
3 matters than needlessly consumed managing a case with a recalcitrant litigant. Indeed, “trial
4 courts do not have time to waste on multiple failures by aspiring litigants to follow the rules and
5 requirements of our courts.” *Pagtalunan v. Galaza*, 291 F.3d 639, 644 (9th Cir. 2002) (Trott, J.,
6 concurring in affirmance of district court’s involuntary dismissal with prejudice of habeas petition
7 where petitioner failed to timely respond to court order and noting “the weight of the docket-
8 managing factor depends upon the size and load of the docket, and those in the best position to
9 know what that is are our beleaguered trial judges.”). Delays inevitably have the inherent risk
10 that evidence will become stale or witnesses’ memories will fade or be unavailable and can
11 prejudice a respondent. *See Sibron v. New York*, 392 U.S. 40, 57 (1968).

12 As to the fourth factor, a preference to rule on the merits usually weighs against dismissal
13 because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643
14 (9th Cir. 2002). Here, the Petition is facially deficient. First, the Petition failed to name a proper
15 respondent, identifying “Director” as Respondent. A petitioner seeking habeas corpus relief must
16 name the officer having custody of him as the respondent to the petition. Rule 2(a) of the Rules
17 Governing § 2254 Cases; *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996); *Stanley v.*
18 *California Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). Petitioner’s failure to name a proper
19 respondent requires dismissal of his habeas petition for lack of jurisdiction. *Stanley*, 21 F.3d at
20 360; *Olson v. California Adult Auth.*, 423 F.2d 1326, 1326 (9th Cir. 1970); *see also Billiteri v.*
21 *United States Bd. Of Parole*, 541 F.2d 938, 948 (2nd Cir. 1976). Further, as noted in the Court’s
22 previous Order, the Petition fails to identify any facts to support any of the grounds for relief
23 asserted in the Petition. (*See* Doc. No. 5 at 3). Thus, Petitioner has not presented a matter on the
24 merits for the Court to consider. Additionally, the instant dismissal is a dismissal *without*
25 prejudice, which is a lesser sanction than a dismissal with prejudice. And finally, a court’s
26 warning to a party that failure to obey the court’s order will result in dismissal satisfies the
27 “consideration of alternative” requirement. *See Ferdik*, 963 F.2d at 1262. The Court’s previous
28 Order expressly warned Petitioner that if he failed to respond, the undersigned would recommend

1 the district court dismiss the Petition. (Doc. No. 5 at 4, ¶4). Thus, Petitioner had adequate
2 warning that dismissal would result from his noncompliance with the Court’s order.

3 After considering the factors set forth *supra* and binding case law, the undersigned
4 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41 and Local Rule 110.

5 Accordingly, it is **ORDERED**:

6 The Clerk of Court is directed to assign a district judge to this case.

7 It is further **RECOMMENDED**:

8 1. This case be dismissed without prejudice for failure to prosecute and/or comply
9 with a court order.

10 2. The Clerk of Court be directed to terminate any pending motions/deadlines and
11 close this case.

12 **NOTICE TO PARTIES**

13 These findings and recommendations will be submitted to the United States district judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
15 days after being served with these findings and recommendations, a party may file written
16 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
17 Findings and Recommendations.” Parties are advised that failure to file objections within the
18 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
19 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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21 Dated: January 19, 2023

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23 HELENA M. BARCH-KUCHTA
24 UNITED STATES MAGISTRATE JUDGE
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