

1 the Order severing Plaintiff’s case, the Court expressly warned Plaintiff that a failure to comply
2 “will result in dismissal of that Plaintiff’s individual action.” (Doc. No. 1 at 4, ¶ 7). Plaintiff
3 Grant has failed to timely comply with the April 5, 2023 Order.¹

4 **APPLICABLE LAW AND ANALYSIS**

5 **A. Legal Standard**

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 other Rules or with a court
8 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889
9 (9th Cir. 2019) (citations omitted). Similarly, the Local Rules, corresponding with Federal Rule
10 of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with ... any order of
11 the Court may be grounds for the imposition by the Court of any and all sanctions ... within the
12 inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent power to control
13 their dockets” and, in exercising that power, may impose sanctions, including dismissal of an
14 action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A
15 court may dismiss an action based on a party’s failure to prosecute an action, obey a court order,
16 or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
17 (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal*
18 *Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order);
19 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and
20 to comply with local rules). In determining whether to dismiss an action, the Court must
21 consider several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the
22 Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
23 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
24 sanctions. *Henderson*, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

25 **B. Analysis**

26 The undersigned considers each of the above-stated factors and concludes dismissal is
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28 ¹ In addition to the forty-five (45) days, the undersigned afforded Plaintiff and additional fifteen (15) days
for mailing before issuing these Findings and Recommendation.

1 warranted in this case. As to the first factor, the expeditious resolution of litigation is deemed to
2 be in the public interest, satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983,
3 990-91 (9th Cir. 1999).

4 Turning to the second factor, the Court's need to efficiently manage its docket cannot be
5 overstated. This Court has "one of the heaviest caseloads in the nation," and due to the delay in
6 filling judicial vacancies, which was further exacerbated by the Covid-19 pandemic, continues to
7 operate under a declared judicial emergency. *See* Amended Standing Order in Light of Ongoing
8 Judicial Emergency in the Eastern District of California. The Court's time is better spent on its
9 other matters than needlessly consumed managing a case with a recalcitrant litigant. The Court
10 cannot effectively manage its docket if a litigant ceases to litigate his case. Thus, the Court finds
11 that both the first and second factors weigh in favor of dismissal.

12 Delays inevitably have the inherent risk that evidence will become stale or witnesses'
13 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third
14 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Thus, the third factor, risk of prejudice
15 to defendant, also weighs in favor of dismissal since a presumption of injury arises from the
16 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524
17 (9th Cir. 1976).

18 Finally, the fourth factor usually weighs against dismissal because public policy favors
19 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,
20 "this factor lends little support to a party whose responsibility it is to move a case toward
21 disposition on the merits but whose conduct impedes progress in that direction," which is the case
22 here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th
23 Cir. 2006) (citation omitted). Indeed, "trial courts do not have time to waste on multiple failures
24 by aspiring litigants to follow the rules and requirements of our courts." *Pagtalunan v. Galaza*,
25 291 F.3d 639, 644 (9th Cir. 2002) (Trott, J., concurring in affirmance of district court's
26 involuntary dismissal with prejudice of habeas petition where petitioner failed to timely respond
27 to court order and noting "the weight of the docket-managing factor depends upon the size and
28 load of the docket, and those in the best position to know what that is are our beleaguered trial

1 judges.”).

2 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
3 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
4 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court’s April 5, 2023, Order
5 expressly warned Plaintiff that his failure to comply with the Court’s order would result in a
6 dismissal of this action. (Doc. No. 1 at 4, ¶ 7). Thus, Plaintiff had adequate warning that
7 dismissal could result from his noncompliance. And the instant dismissal is a dismissal *without*
8 prejudice, which is a lesser sanction than a dismissal with prejudice, thereby addressing the fifth
9 factor.

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

12 Accordingly, it is **RECOMMENDED**:

13 This action be **DISMISSED** without prejudice for Plaintiff’s failure to obey a court order
14 and failure to prosecute this action.

15 **NOTICE**

16 These Findings and Recommendations will be submitted to the United States District
17 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**
18 **of the date of service** of these Findings and Recommendations, Plaintiff may file written
19 objections with the Court. The document should be captioned, “Objections to Magistrate Judge’s
20 Findings and Recommendations.” Plaintiff’s failure to file objections within the specified time
21 may result in waiver of his rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.
22 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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24 Dated: June 5, 2023


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE