

1 court order. (ECF No. 14.) On November 29, 2023, Plaintiff filed a notice of change of address,
2 and the Court re-served the August 29, 2023 order to show cause and November 27, 2023
3 findings and recommendations to Plaintiff’s new address. (ECF No. 15.) On December 20,
4 2023, the Court vacated the findings and recommendations, and granted Plaintiff’s motion for a
5 thirty-day extension of time to respond to the order to show cause. (ECF Nos. 17, 18.)

6 The extended deadline for Plaintiff to respond to the Court’s order has now expired, and
7 Plaintiff has not responded to the August 29, 2023 order to show cause or otherwise
8 communicated with the Court.

9 **II. Failure to Prosecute and Failure to Obey a Court Order**

10 **A. Legal Standard**

11 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
12 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
13 within the inherent power of the Court.” District courts have the inherent power to control their
14 dockets and “[i]n the exercise of that power they may impose sanctions including, where
15 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
16 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
17 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
18 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
19 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
20 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)
21 (dismissal for failure to comply with court order).

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

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1 **B. Discussion**

2 Here, Plaintiff’s response to the Court’s August 29, 2023 order to show cause is overdue
3 and he has failed to comply with the Court’s order. The Court cannot effectively manage its
4 docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first and second
5 factors weigh in favor of dismissal.

6 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
7 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
8 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
9 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d
10 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
11 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
12 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Products*
13 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

14 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
15 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
16 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. Plaintiff was warned in the Court’s
17 December 20, 2023 order that failure to comply with that order would result in dismissal of this
18 action, without prejudice, for failure to prosecute and failure to obey a court order. (ECF No. 18,
19 p. 2.) Thus, Plaintiff had adequate warning that dismissal could result from his noncompliance.

20 Additionally, at this stage in the proceedings there is little available to the Court that
21 would constitute a satisfactory lesser sanction while protecting the Court from further
22 unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in forma pauperis* in this
23 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is
24 likely to have no effect given that Plaintiff has ceased litigating his case.

25 **III. Recommendation**

26 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY
27 RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court
28 order and for Plaintiff’s failure to prosecute this action.

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

9
10 IT IS SO ORDERED.

11 Dated: February 5, 2024

/s/ Barbara A. McAuliffe
12 UNITED STATES MAGISTRATE JUDGE