

1 generally Doc. No. 10). The Court afforded Plaintiff three options to exercise no later than
2 August 29, 2024: (1) file an amended complaint; (2) file a notice that he intends to stand on his
3 Complaint subject to the undersigned recommending the district court dismiss for reasons stated
4 in the July 25, 2024 Screening Order; or (3) file a notice to voluntarily dismiss this action,
5 without prejudice, under Federal Rule of Civil Procedure 41(a)(1) because no defendant had yet
6 been served. (*Id.* at 6-7). On August 30, 2024, the Court granted Plaintiff’s motion for extension
7 of time, extending Plaintiff’s deadline to respond to the Court’s July 25, 2024 screening order to
8 October 15, 2024. (Doc. No. 12).

9 In granting his motion for extension of time, the Court expressly warned Plaintiff that if
10 he “fails to timely respond to the Court’s July 25, 2024 Screening Order by this extended deadline
11 or seek a further extension of time and show good cause, the undersigned will recommend that
12 the district court dismiss this action for Plaintiff’s failure to prosecute this action and as a sanction
13 for Plaintiff’s failure to comply with a court order under Local Rule 110.” (*Id.* at 2 ¶ 3). As of
14 the date of this of these Findings and Recommendations, Plaintiff has failed to submit a response
15 to the Court’s July 25, 2024 Screening Order, or request a further extension of time to comply,
16 and the time to do so has expired. (*See* docket.)

17 **APPLICABLE LAW AND ANALYSIS**

18 **A. Legal Standard**

19 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action
20 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court
21 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889
22 (9th Cir. 2019) (citations omitted). Similarly, this Court’s Local Rules, which correspond with
23 Federal Rule of Civil Procedure 11, provide, “[f]ailure of counsel or of a party to comply with . . .
24 any order of the Court may be grounds for the imposition by the Court of any and all sanctions
25 . . . within the inherent power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent
26 power to control their dockets” and, in exercising that power, may impose sanctions, including
27 dismissal of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th
28 Cir. 1986). A court may dismiss an action based on a party’s failure to prosecute an action, obey

1 a court order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61
2 (9th Cir. 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone*
3 *v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with
4 a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure
5 to prosecute and to comply with local rules). In determining whether to dismiss an action, the
6 Court must consider the following factors: (1) the public’s interest in expeditious resolution of
7 litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants;
8 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less
9 drastic sanctions. *Henderson*, 779 F.2d at 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir.
10 1988).

11 **B. Analysis**

12 After considering each of the above-stated factors, the undersigned concludes dismissal
13 without prejudice is warranted in this case. As to the first factor, the expeditious resolution of
14 litigation is deemed to be in the public interest, satisfying the first factor. *Yourish v. California*
15 *Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999).

16 Turning to the second factor, this Court’s need to efficiently manage its docket cannot be
17 overstated. This Court has “one of the heaviest caseloads in the nation,” and due to the delay in
18 filling judicial vacancies, which was further exacerbated by the COVID-19 pandemic, operates
19 under a declared judicial emergency. *See Amended Standing Order in Light of Ongoing Judicial*
20 *Emergency in the Eastern District of California*. This Court’s time is better spent on its other
21 matters than needlessly consumed managing a case with a recalcitrant litigant. The Court cannot
22 effectively manage its docket when a litigant ceases to litigate his/her case or respond to a court
23 order. Thus, the Court finds that the second factor weighs in favor of dismissal.

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

1 1976). Because Plaintiff's inaction amounts to an unreasonable delay in prosecuting this action,
2 the third factor weighs in favor of dismissal.

3 The fourth factor usually weighs against dismissal because public policy favors the
4 disposition of cases on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002).
5 However, "this factor lends little support to a party whose responsibility it is to move a case
6 toward disposition on the merits but whose conduct impedes progress in that direction," which is
7 the case here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217,
8 1228 (9th Cir. 2006) (citation omitted). Indeed, "trial courts do not have time to waste on
9 multiple failures by aspiring litigants to follow the rules and requirements of our courts."
10 *Pagtalunan*, 291 F.3d at 644 (Trott, J., concurring in affirmance of district court's involuntary
11 dismissal with prejudice of habeas petition where petitioner failed to timely respond to court
12 order and noting "the weight of the docket-managing factor depends upon the size and load of the
13 docket, and those in the best position to know what that is are our beleaguered trial judges.").
14 Further, as set forth in the Screening Order, the Court already determined that the Complaint, as
15 pled, failed to state a claim, so this factor does not weigh in favor of the Plaintiff. (*See* Doc. No.
16 10).

17 Finally, the Court's warning to a party that failure to obey the court's order will result in
18 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;
19 *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's July 25 and August 29
20 Orders expressly warned Plaintiff that his failure to respond to the Court's Order would result in a
21 recommendation of dismissal of this action. (Doc. No. 10 at 7 ¶ 2; Doc. No. 12 at 2 ¶ 3). Thus,
22 Plaintiff had adequate warning that dismissal could result from his noncompliance. And the
23 instant dismissal is a dismissal *without* prejudice, which is a lesser sanction than a dismissal with
24 prejudice, thereby satisfying the fifth factor.

25 After considering the factors set forth *supra* and binding case law, the undersigned
26 recommends dismissal, without prejudice, under Fed. R. Civ. P. 41(b) and/or Local Rule 110.

27 Accordingly, it is hereby **ORDERED**:

28

1 The Clerk of Court randomly assign this case to a district judge for consideration of these
2 Findings and Recommendations.

3 It is further **RECOMMENDED**:

4 This action be **DISMISSED** *without prejudice* as a sanction for Plaintiff's failure to obey a
5 court order under Local Rule 110 and for failure to prosecute under Rule 41.

6 **NOTICE TO PARTIES**

7 These Findings and Recommendations will be submitted to the United States District
8 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
9 after being served with a copy of these Findings and Recommendations, a party may file written
10 objections with the Court. *Id.*; Local Rule 304(b). The document should be captioned,
11 "Objections to Magistrate Judge's Findings and Recommendations" and shall not exceed **fifteen**
12 **(15) pages**. The Court will not consider exhibits attached to the Objections. To the extent a party
13 wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its
14 CM/ECF document and page number, when possible, or otherwise reference the exhibit with
15 specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by
16 the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. §
17 636(b)(1)(C). A party's failure to file any objections within the specified time may result in the
18 waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

19
20 Dated: October 25, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE