



1 In the pending motion for terminating sanctions, Defendants state that Plaintiff  
2 appeared for his deposition in March 2024 and, at that time, admitted that he had not served  
3 further discovery responses as ordered by the Court on February 8, 2024. See ECF No. 72-1  
4 (declaration of defense counsel). As of the date of filing Defendants' motion – April 15, 2024 –  
5 Plaintiff still had not complied with the February 8, 2024, order. Plaintiff has not filed an  
6 opposition to the pending motion for terminating sanctions.

7 The court must weigh five factors before imposing the harsh sanction of dismissal.  
8 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal  
9 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in  
10 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of  
11 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;  
12 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,  
13 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate  
14 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,  
15 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where  
16 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.  
17 1986). Dismissal has also been held to be an appropriate sanction for failure to follow local rules,  
18 see Ghazali, 46 F.3d at 53, failure to comply with an order to file an amended complaint, see  
19 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992), failure to inform the district court  
20 and parties of a change of address pursuant to local rules, see Carey v. King, 856 F.2d 1439,  
21 1440-41 (9th Cir. 1988) (per curiam), failure to appear at trial, see Al-Torki v. Kaempfen, 78 F.3d  
22 1381, 1385 (9th Cir. 1996), and discovery abuses, see Henry v. Gill Indus., Inc., 983 F.2d 943,  
23 948 (9th Cir. 1993).

24 Given Plaintiff's failure to comply with the Court's February 8, 2024, order,  
25 Plaintiff's failure to file an opposition to the pending motion, and considering the factors outlined  
26 above, the Court finds that dismissal of this action as a discovery sanction is warranted. See Fed.  
27 R. Civ. P. 37(b)(2)(A)(v).

28 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Accordingly, IT IS HEREBY ORDERED as follows:

1. Defendants' unopposed motion for terminating sanctions, ECF No. 72, is GRANTED.
2. This action is DISMISSED without prejudice.
3. The Clerk of the Court is directed to enter judgment and close this file.

Dated: June 5, 2024



---

DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE