

1 Appearance on behalf of Plaintiff. (Doc. Nos. 36, 38.) On September 15, 2020, Plaintiff's
2 attorneys filed a Motion to Withdraw. (Doc. No. 42). On October 2, 2020, the Court granted the
3 motion of Bobby Saadian, Thiago Coelho, Johnny Ogata, and Wilshire Law Firm to withdraw as
4 attorney of record for Plaintiff. (Doc. No. 49.)

5 This matter was set for a status hearing on November 4, 2020 to discuss Plaintiff's course
6 moving forward. (Doc. No. 50.) Plaintiff failed to appear at that hearing. (Doc. No. 51.) On
7 November 4, 2020, the Court issued an Order to Show Cause. (Doc. No. 52.) The Court ordered
8 Plaintiff to personally appear via telephone conference on December 4, 2020 to show cause why
9 sanctions should not be imposed and/or this action should not be dismissed for her failure to
10 appear at the November 4, 2020 status conference. (*Id.* at 2.) The Order to show cause was served
11 by mail on the Plaintiff at her last known address of record. On December 4, 2020, the Court held
12 a hearing on the Order to Show Cause. Plaintiff failed to appear.

13 The Court will therefore recommend that this action be dismissed, with prejudice, for
14 failure to prosecute and failure to obey the Court's orders.

15 II. Discussion

16 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
17 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
18 within the inherent power of the Court.” District courts have the inherent power to control their
19 dockets and “[i]n the exercise of that power they may impose sanctions including, where
20 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
21 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
22 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
23 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
24 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
25 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)
26 (dismissal for failure to comply with court order).

27 In determining whether to dismiss an action, the Court must consider several factors: (1)
28 the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
2 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779
3 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

4 Here, the action has been pending in this Court since March 2020, and despite repeated
5 opportunities for Plaintiff to appear and prosecute her case, it remains unprosecuted by Plaintiff.
6 Plaintiff has failed to appear at two court hearings, despite specific order of the Court to appear.
7 The Court cannot hold this case in abeyance awaiting Plaintiff's compliance. The Court
8 additionally cannot effectively manage its docket if Plaintiff ceases litigating her case. Thus, the
9 Court finds that both the first and second factors weigh in favor of dismissal.

10 The third factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a
11 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
12 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs
13 against dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*,
14 291 F.3d 639, 643 (9th Cir. 2002). However, "this factor lends little support to a party whose
15 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
16 progress in that direction," which is the case here. *In re Phenylpropanolamine (PPA) Prods.*
17 *Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

18 Finally, the court's warning to a party that failure to obey the court's order will result in
19 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262;
20 *Malone*, 833 at 132-33; *Henderson*, 779 F.2d at 1424. The Court's October 2, 2020 order
21 directing the Plaintiff to appear at a status conference warned that failure to comply may result in
22 the imposition of sanctions. (Doc. No. 50 at 2.) Further, the Court's November 4, 2020 order to
23 show cause expressly warned Plaintiff that her failure to respond would "result in a
24 recommendation for dismissal of this action for failure to prosecute, failure to appear, and failure
25 to obey the Court's order." (Doc. No. 52 at 2.) Thus, Plaintiff had adequate warning that
26 dismissal could result from her noncompliance.

27 Additionally, at this stage in the proceedings there is little available to the Court that
28 would constitute a satisfactory lesser sanction while protecting the Court from further

1 unnecessary expenditure of its scarce resources. The imposition of monetary sanctions or the
2 preclusion of evidence/witnesses are likely to have no effect given that Plaintiff has ceased
3 litigating her case.

4 **III. Conclusion and Recommendation**

5 Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, with
6 prejudice, for Plaintiff's failure to prosecute this action, failure to appear, and failure to obey this
7 Court's orders.

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

17 Dated: December 7, 2020

17 /s/ Barbara A. McAuliffe
18 UNITED STATES MAGISTRATE JUDGE