

1 an opposition to the motion to dismiss. (ECF No. 72.) The thirty-day period expired, and
2 plaintiff did not file an opposition or otherwise respond to the court’s order.

3 “Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an
4 action for failure to comply with any order of the court.” Ferdik v. Bonzelet, 963 F.2d 1258,
5 1260 (9th Cir. 1992). “In determining whether to dismiss a case for failure to comply with a
6 court order the district court must weigh five factors including: ‘(1) the public’s interest in
7 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
8 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;
9 and (5) the availability of less drastic alternatives.’” Ferdik, 963 F.2d at 1260-61 (quoting
10 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986)); see also Ghazali v. Moran, 46
11 F.3d 52, 53 (9th Cir. 1995).

12 In determining to recommend that this action be dismissed, the court considered the five
13 factors set forth in Ferdik. Here, as in Ferdik, the first two factors strongly support dismissal of
14 this action. The action has been pending for over four years and defendants’ dispositive motion
15 has been pending over four months. Plaintiff’s failure to comply with the Local Rules and the
16 court’s August 30, 2023 order suggests that he abandoned this action and that further time spent
17 by the court thereon will consume scarce judicial resources in addressing litigation which plaintiff
18 demonstrates no intention to pursue.

19 Under the circumstances of this case, the third factor, prejudice to defendants from
20 plaintiff’s failure to oppose the motion, also favors dismissal. Plaintiff’s failure to oppose the
21 motion prevents defendants from addressing plaintiff’s substantive opposition, and would delay
22 resolution of this action, thereby causing defendants to incur additional time and expense.

23 The fifth factor also favors dismissal. The court advised plaintiff of the requirements
24 under the Local Rules and granted ample additional time to oppose the pending motion, all to no
25 avail. The court finds no suitable alternative to dismissal of this action.


26 The fourth factor, public policy favoring disposition of cases on their merits, weighs
27 against dismissal of this action as a sanction. However, for the reasons set forth supra, the first,
28 second, third, and fifth factors strongly support dismissal. Under the circumstances of this case,

1 those factors outweigh the general public policy favoring disposition of cases on their merits. See
2 Ferdik, 963 F.2d at 1263.

3 For the foregoing reasons, IT IS HEREBY RECOMMENDED that this action be
4 dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
10 objections shall be filed and served within fourteen days after service of the objections. The
11 parties are advised that failure to file objections within the specified time may waive the right to
12 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

13 Dated: December 27, 2023

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16 KENDALL J. NEWMAN
17 UNITED STATES MAGISTRATE JUDGE

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