

1 Local Civil Rule 7.1(e)(2), Plaintiff's response was due by April 26, 2011. Plaintiff did not file a
2 response to SPS's motion. The Court took this matter under submission and vacated the hearing
3 scheduled for May 10, 2011 pursuant to Civil Local Rule 7.1.d.1.

4 DISCUSSION

5 A district court may properly grant an unopposed motion to dismiss pursuant to a local rule
6 where the local rule permits, but does not require, the granting of a motion for failure to respond. *See,*
7 *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). In exercising its discretion to dismiss an action for
8 failing to comply with a district court's local rules, a court is "required to weigh several factors: '(1)
9 the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket;
10 (3) the risk of prejudice to the defendant[]; (4) the public policy favoring disposition of cases on their
11 merits; and (5) the availability of less drastic sanctions.'" *Id.*

12 Local Civil Rule 7.1(f)(3)(c) provides that "[i]f an opposing party fails to file papers in the
13 manner required by Local Rule 7.1(e)(2), that failure may constitute a consent to the granting of that
14 motion or other request for ruling by the court." Plaintiff was required to file his response in
15 opposition or statement of non-opposition on or before April 26, 2011. To date, Plaintiff has not
16 responded. Plaintiff's failure to comport with this Court's filing requirements impede the Court's
17 ability to expedite resolution of this action. Such non-compliance inherently delays resolution of the
18 case and insures to the detriment of the public. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir.
19 2002). Thus, the first and second factors weigh in favor of dismissal.

20 The third factor "is related to the strength of the plaintiff's excuse for the default, if any." *Saba*
21 *v. Caplan*, 2010 WL 4235473 *1 (N.D. Cal. Oct.21, 2010); *Yourish v. California Amplifier*, 191 F.3d
22 983, 991 (9th Cir. 1999). Plaintiff does not offer any "excuse" for his non-compliance, nor is any
23 apparent from the record. Thus, the third factor weighs in favor of dismissal.

24 As to the fourth factor, public policy generally favors disposition of cases on their merits. *See*
25 *e.g., Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998). This policy lends little
26 support, however, to a party responsible for moving a case forward but whose conduct impedes
27 progress in that direction. *See In re Eisen*, 31 F.3d 1447, 1454 (9th Cir. 1994). A case cannot move
28 toward resolution on the merits when Plaintiff fails to defend his case against a Rule 12(b)(6) and (e)

1 motion.

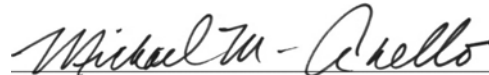
2 Finally, the availability of less drastic sanctions does not necessitate such sanctions be
3 employed here. Because at least three of the factors strongly support dismissal, on balance, dismissal
4 is an appropriate sanction in this case. *See Hernandez v. City of El Monte*, 138 F.3d 393 (9th Cir.
5 1998). In sum, after weighing the relevant *Ghazali* factors, the Court exercises its discretion and finds
6 Plaintiff's failure to respond constitutes consent to granting SPS's motion to dismiss. Based on such
7 grounds, consideration of SPS's request for judicial notice is unnecessary

8 **CONCLUSION**

9 Accordingly, the Court **GRANTS** SPS's Motion to Dismiss Plaintiff's Complaint. [Doc. No.
10 4.] Plaintiff's Complaint is **DISMISSED** without prejudice.

11 **IT IS SO ORDERED.**

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13 DATED: May 9, 2011



14 Hon. Michael M. Anello
15 United States District Judge
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