



1 consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to  
2 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
3 disposition of cases on their merits; and (5) the availability of less drastic alternatives.<sup>6</sup>

4 The first two factors, the public’s interest in expeditiously resolving this litigation and the  
5 court’s interest in managing its docket, weigh in favor of dismissal of the plaintiff’s claims. The  
6 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a  
7 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading  
8 ordered by the court or prosecuting an action.<sup>7</sup> The fourth factor—the public policy favoring  
9 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

10 The fifth factor requires the court to consider whether less drastic alternatives can be used  
11 to correct the party’s failure that brought about the court’s need to consider dismissal.<sup>8</sup> Courts  
12 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must  
13 explore possible and meaningful alternatives.”<sup>9</sup> Because this action cannot proceed until and  
14 unless plaintiff files an amended complaint, the only alternative is to enter a second order setting  
15 another deadline. But the reality of repeating an ignored order is that it often only delays the  
16 inevitable and squanders finite resources along the way. The circumstances here do not indicate  
17 that this case will be an exception: there is no hint that the plaintiff needs additional time nor  
18 evidence that he did not receive the court’s order. Setting another deadline is not a meaningful  
19 alternative given these circumstances. So the fifth factor favors dismissal.

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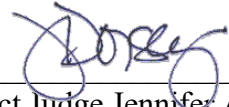
21 <sup>6</sup> *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
22 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

23 <sup>7</sup> See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

24 <sup>8</sup> *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less  
25 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);  
26 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the  
27 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic  
28 alternatives prior to disobedience of the court’s order as satisfying this element[,]” i.e., like the  
“initial granting of leave to amend coupled with the warning of dismissal for failure to  
comply[,]” have been “eroded” by *Yourish*).

<sup>9</sup> *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

1 IT IS THEREFORE ORDERED THAT the Report and Recommendation [ECF No. 8] is  
2 **ADOPTED** in full, **this action is DISMISSED with prejudice**, and the Clerk of Court is  
3 directed to **CLOSE THIS CASE**.



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U.S. District Judge Jennifer A. Dorsey  
May 8, 2024

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