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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 **IN THE MATTER OF**

10 Donald W. Parrillo

No. CV11-1285-PHX-DGC

ORDER

11 _____
12 Donald W. Parrillo,

13 Appellant,

14 v.

15 Nancy Reilly and Zane D. Smith,

16 Appellees.
17

18 On June 29, 2011, Appellant Donald W. Parrillo's appeal of a bankruptcy court
19 order was lodged in this Court. Doc. 1. Appellant was informed that he must, within 14
20 days, designate the items to be included in the record on appeal and serve a copy on the
21 Appellees. Doc. 1 at 2. Appellant was also notified that his failure to comply with
22 applicable rules could result in dismissal of his appeal. Doc. 2 at 2. Despite these
23 instructions, Appellant did not designate the record on appeal. Appellant was advised of
24 this failure in an order dated October 20, 2011, but never responded with a designation of
25 the record on appeal. Doc. 3.

26 On January 9, 2012, the Court entered a scheduling order that required Appellant
27 to file his opening brief within 14 days. Doc. 4. The order again informed him that his
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1 appeal could be dismissed if he failed to comply with applicable rules and orders. *Id.* at
2 2. Appellant filed a motion seeking to extend the briefing schedule for 180 days, but
3 failed to provide any substantiation for his request. As a result, on February 9, 2012, the
4 Court denied Appellant's motion for an extension of time. Doc. 9. Appellant thereafter
5 failed to file his opening brief.

6 In response to Appellant's request for an extension of time, Appellees filed a
7 motion to dismiss. Doc. 8. The motion noted that Appellant had failed to designate the
8 record on appeal as required by applicable rules. *Id.* In the Court's order denying
9 Appellant's request for an extension of time, the Court specifically stated that it would
10 rule on the motion to dismiss after briefing was completed. Doc. 9. Appellant failed to
11 respond to the motion to dismiss.

12 Appellant clearly has been warned that his failure to comply with applicable rules
13 and Court orders could result in dismissal of his appeal. *See* Doc. 1 at 11; Doc. 4 at 2.
14 He nonetheless has failed to designate his record on appeal, file an opening brief, or
15 respond to the motion to dismiss. This appeal has been pending for almost one year with
16 virtually no activity because of Appellant's repeated failures to satisfy his obligations.

17 The Ninth Circuit has developed a five part test for determining whether a
18 dismissal sanction is just: (1) the public's interest in expeditious resolution of the
19 litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the party
20 seeking sanctions; (4) the public policy favoring disposition of cases on the merits; and
21 (5) the availability of less drastic sanctions. *Valley Engineers, Inc. v. Electric*
22 *Engineering Co.*, 158 F.3d 1051, 1057 (9th Cir. 1998). The first three factors favor
23 dismissal of this appeal: the appeal cannot be resolved expeditiously when Appellant
24 fails to comply with applicable rules, the Court cannot effectively manage its docket in
25 such a situation, and the resulting delay prejudices Appellees. The fourth factor weighs
26 against dismissal. In considering the fifth factor, the Court has contemplated less drastic
27 sanctions, but because Appellant repeatedly has demonstrated his failure to comply with
28 rules and orders, the Court concludes that dismissal is the only appropriate sanction.

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IT IS ORDERED that Appellees' motion to dismiss appeal (Doc. 8) is **granted**.
The Clerk shall terminate this matter.

Dated this 9th day of May, 2012.



David G. Campbell
United States District Judge