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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Randall Harris, a single man,
10 Plaintiff,

No. CV14-0658 PHX-DGC

ORDER

11 v.

12 Branch Management Tree Service, LLC, an
13 Arizona corporation, et al.,
14 Defendants.

15 Plaintiff's counsel filed a motion to withdraw. Doc. 6. In response to the motion,
16 the Court set a hearing on May 7, 2014. Doc. 7. The Court specifically ordered that
17 Plaintiff Randall Harris "shall appear in person at the hearing." *Id.* Plaintiff did not
18 appear at the hearing. Plaintiff's counsel did appear, and explained that he had been
19 unable to communicate with Plaintiff. Counsel stated that Plaintiff's telephone has been
20 disconnected and letters mailed to Plaintiff's address, including those sent by certified
21 mail, have been returned unopened. Counsel even stated that he performed a skip trace to
22 try to locate Plaintiff, but was unsuccessful.

23 The Court granted counsel's motion to withdraw. Because Plaintiff failed to
24 appear at the hearing as ordered and does not have a telephone number or address at
25 which the Court may contact him, the Court concludes that this case must be dismissed
26 without prejudice.

27 The Court has inherent power to dismiss a case for failure to prosecute. *See Link*
28 *v. Wabash R.R. Co.*, 370 U.S. 626, 629-30 (1962). "The power to invoke this sanction is

1 necessary in order to prevent undue delays in the disposition of pending cases and to
2 avoid congestion in the District Courts.” *Id.* In determining whether dismissal is
3 warranted, the Court must weigh five factors: the public’s interest in expeditious
4 resolution of the litigation, the Court’s need to manage its docket, the risk of prejudice to
5 the defendant, the public policy favoring disposition of cases on their merits, and the
6 availability of less drastic sanctions. *See Carey v. King*, 856 F.2d 1439, 1440 (9th Cir.
7 1988).

8 Balancing these factors, the Court concludes that dismissal without prejudice is
9 warranted. This case cannot be resolved expeditiously, and the Court cannot manage its
10 docket with respect to this case, without Plaintiff’s participation or any means of
11 contacting him. Defendant will be prejudiced if this case remains pending with Plaintiff
12 unrepresented and incommunicado. Although public policy clearly favors disposition on
13 the merits, Plaintiff’s failure to appear at the hearing and failure to inform counsel of his
14 location make disposition on the merits impossible. The Court has considered alternative
15 measures, but can find none that seems effective. An order to show cause why dismissal
16 is not warranted or an order imposing lesser sanctions “would only find itself taking a
17 round trip tour through the United States mail.” *Id.* at 1441. The Court finds that the least
18 drastic response to Plaintiff’s failure to appear at the hearing and failure to provide
19 information where he may be contacted is dismissal without prejudice.

20 **IT IS ORDED THAT** that this case is **dismissed without prejudice**. The clerk is
21 directed to **terminate** this matter.

22 Dated this 8th day of May, 2014.

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27 David G. Campbell
28 United States District Judge