

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Derrick Johnson, an individual,
10 Plaintiff,

No. CV-14-01875-PHX-DGC

ORDER

11 v.

12 Officer Robert Brady, et al.,
13 Defendants.

14
15 Plaintiff filed a pro se complaint against Defendants on August 22, 2014. Doc. 1.
16 On October 10, 2014, Defendants La Paz County, La Paz County Board of Supervisors,
17 County Attorney Rogers, and County Public Defender Puchek filed a motion to dismiss.
18 Doc. 11. On November 4, 2014, Defendants Brady, Newton, and the Town of Quartzsite
19 filed a motion to dismiss. Doc. 20. On November 7, 2014, Defendant Samuel Vederman
20 filed a motion to dismiss. Doc. 22. The Court entered an order on January 28, 2015
21 dismissing Plaintiff's complaint: (1) in part against Defendants Brady, Newton, and the
22 Town of Quartzsite; (2) entirely as to Defendants Vederman, Rogers, Puchek, La Paz
23 County, and La Paz County Board of Supervisors; (3) with prejudice against Defendants
24 Vederman and Rogers; and (4) with prejudice as to Plaintiff's § 1983 claim against
25 Defendant Puchek. Doc. 37. Plaintiff was ordered to file an amended complaint by
26 March 16, 2015. *Id.* at 17.

27
28

1 Plaintiff failed to notify the Court of his change of address, and mail was returned
2 to the Court on February 12 and 23, 2015. Docs. 40, 41. The Court granted Plaintiff
3 additional time to file an amended complaint, extending the deadline to May 1, 2015.
4 Doc. 43. Plaintiff filed an amended complaint on April 24, 2015. Doc. 44. Defendants
5 filed motions to dismiss the amended complaint. Docs. 49, 50, 51. On June 17, 2015, the
6 Court dismissed with prejudice Plaintiff's amended allegations against Defendants
7 Vederman, Rogers, Puchek, Welch, Town of Quartzsite, La Paz County, and La Paz
8 County Board of Supervisors. Doc. 65. Only Defendants Brady and Newton remained.

9 On June 1, 2015, Plaintiff filed an interlocutory appeal (Doc. 62), which was
10 dismissed for lack of jurisdiction by the Ninth Circuit Court of Appeals on November 2,
11 2015 (Doc. 74-2).

12 On November 20, 2015 Defendants Brady and Newton filed a motion for
13 summary judgment. Doc. 78. Once again, Plaintiff failed to file a notice of change of
14 address with the Court and mail was returned to this Court as undeliverable. Docs. 81,
15 82. On January 6, 2016, the Court issued an order giving Plaintiff until January 22, 2016
16 to file a response to Defendants' motion for summary judgment. Doc. 83. Plaintiff has
17 failed to comply with that order and respond to the motion within the time limit set forth
18 in the Federal Rules of Civil Procedure. For reasons stated below, the Court will dismiss
19 this action without prejudice.

20 The Court explicitly warned Plaintiff that, even though he is proceeding pro se, he
21 is still required to follow the Federal Rules of Civil Procedure and the Court's Local
22 Rules of Civil Procedure in prosecuting his case. *See* Docs. 25, 37, 65, 83. The Court
23 cautioned Plaintiff that his case could be dismissed for his failure to respond to motions
24 filed by opposing parties or for his failure to follow court orders. *See id.* Plaintiff was
25 further warned that if he failed to prosecute this action, or if he failed to comply with
26 the rules or any Court order, the Court may dismiss the action with prejudice pursuant to
27 Rule 41(b) of the Federal Rules of Civil Procedure. *See, e.g.,* Doc. 65 at 9 (citing
28 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992); *Ghazali v. Moran*, 46 F.3d 52,

1 54 (9th Cir. 1995)).

2 Before dismissing a case for failure to prosecute or failure to comply with the rules
3 or an order, the Court must weigh five factors: (1) the public's interest in expeditious
4 resolution of litigation, (2) the Court's need to manage its docket, (3) the risk of prejudice
5 to the defendants, (4) the public policy favoring disposition of cases on their merits, and
6 (5) the availability of less drastic sanctions. *See Ghazali*, 46 F.3d at 53 (citing *Henderson*
7 *v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).

8 The factors favor dismissal. Plaintiff filed this suit more than 18 months ago.
9 Doc. 1. He was served with the motion for summary judgment on November 20, 2015.
10 He has had nearly three months to respond to the motion, but has failed to do so.
11 Because the Court and the public have a strong interest in judicial efficiency and the
12 prompt resolution of litigation, Plaintiff's failure to prosecute this action weighs in favor
13 of dismissal. The risk of prejudice to Defendants also weighs in favor of dismissal.
14 Defendants who are forced to incur expenses and defend themselves in court are
15 prejudiced by a plaintiff's failure to respond to motions or to prosecute the case in a
16 timely and efficient manner. Such is the case here, with the remaining Defendants. The
17 fourth factor, as always, weighs against dismissal. As for the fifth factor, the Court
18 concludes that a dismissal with prejudice would be unduly harsh. Dismissal without
19 prejudice is, however, an appropriate alternative sanction. The overall five-factor
20 analysis favors dismissal. *See Ghazali*, 46 F.3d at 53. The Court, therefore, will dismiss
21 this action without prejudice for Plaintiff's failure to prosecute, his failure to follow the
22 applicable rules, and his failure to comply with the Court's orders, including its January
23 6, 2016 order (Doc. 83).

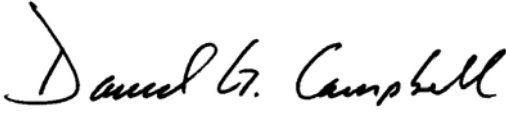
24 **IT IS ORDERED:**

- 25 1. This action is **dismissed without prejudice**.
- 26 2. Defendants' motion for summary judgment (Doc. 78) and Plaintiff's
27 motions to stay (Docs. 85, 88) are **denied as moot**.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The Clerk is directed to terminate this matter and enter judgment accordingly.

Dated this 16th day of February, 2016.



David G. Campbell
United States District Judge