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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Raymond A Ribail,

10 Plaintiff,

11 v.

12 Bank of America NA, et al.,

13 Defendants.
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No. CV-16-08263-PCT-JAT

ORDER

15 This case was filed on June 21, 2016, in the Southern District of New York. The
16 case was transferred to the District of Arizona on November 10, 2016. On January 6,
17 2017, Defendants moved to dismiss this case. The time to respond to this motion has
18 expired and Plaintiff did not respond. All mail the Court has sent to Plaintiff since the
19 November transfer has been returned as undeliverable.

20 Local Rule of Civil Procedure 7.2(i) provides that if an “unrepresented party or
21 counsel does not serve and file the required answering memoranda . . . such non-
22 compliance may be deemed a consent to the . . . granting of the motion and the Court
23 may dispose of the issue summarily.” LRCiv. 7.2(i). “Failure to follow a district court’s
24 local rules is a proper ground for dismissal.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir.
25 1995) (citing *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979)). “Although we construe
26 pleadings liberally in their favor, pro se litigants are bound by the rules of procedure.”
27 *Id.* at 54 (citing *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)). “Before dismissing
28 the action, the district court is required to weigh several factors: ‘(1) the public’s interest

1 in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the
2 risk of prejudice to the [party seeking dismissal]; (4) the public policy favoring
3 disposition of cases on their merits; and (5) the availability of less drastic sanctions.” *Id.*
4 at 53 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). “The first
5 two of these factors favor the imposition of sanctions in most cases, while the fourth cuts
6 against a default or dismissal sanction. Thus the key factors are prejudice and availability
7 of lesser sanctions.” *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990).

8 The dismissal factors in this case are similar to those present in *Ghazali*. In that
9 case, the Ninth Circuit upheld summary dismissal of a 42 U.S.C. § 1983 action for the
10 failure to follow a Nevada district court local rule. *Ghazali*, 46 F.3d at 53. The Nevada
11 rule, like Local Rule 7.2(i), considered the failure to file a response to a motion to
12 “constitute a consent to the granting of the motion.” *Id.* (quoting D. Nev. R. 140-6). The
13 Court reasoned that the dismissal was proper because the pro se plaintiff was bound by
14 the rules of procedure, and was given notice of the motion and ample time to respond. *Id.*
15 at 54 (citing *King*, 814 F.2d at 567).

16 Here, this case has been pending for 7 months; therefore, expeditious resolution
17 favors dismissal. Also, the Court’s need to manage its docket favors dismissal because
18 the Court has no other management option because Plaintiff has failed to maintain a
19 current address with the Court. The risk of prejudice favors dismissal as Defendants
20 continue to incur attorney’s fees and record keeping costs even though this Court has no
21 ability to move this case forward in any way other than dismissal. The public policy
22 favoring merits resolutions weighs against dismissal. Finally, less drastic sanctions are
23 unavailable because any order to show cause or other sanction would simply be taking a
24 round trip through the mail. *Carey v. King*, 856 F.2d 1439, 1440 -1441 (9th Cir. 1988).
25 Thus, four of the five factors favor dismissal.

26 Based on the foregoing,

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IT IS ORDERED that the motion to dismiss (Doc. 35) is granted; this case is dismissed, Plaintiff shall take nothing, and the Clerk of the Court shall enter judgment accordingly.

Dated this 13th day of February, 2017.

