

1 On December 1, 2014, the Court granted Plaintiff a thirty-day extension of time to file his
2 response to Defendants' motion to dismiss. (ECF No. 27.) Plaintiff failed to file a timely
3 opposition. Therefore, on January 13, 2015, the Court ordered Plaintiff to show cause, within
4 twenty-one (21) days, why this action should not be dismissed, with prejudice, for failure to
5 prosecute. (ECF No. 28.)

6 On February 3, 2015, Plaintiff filed a response to the order to show cause, along with a
7 notice of change of address. In his response, Plaintiff indicated that he was forced to relocate his
8 family for safety reasons and requested an extension of time to file his opposition. (ECF No.
9 29.)

10 On February 4, 2015, the Court granted Plaintiff a thirty-day (30) extension of time to file
11 his opposition to the motion to dismiss, which was served on Plaintiff at the new address for
12 service he provided on February 3, 2015. The Court also discharged the order to show cause, but
13 cautioned Plaintiff that if he failed to comply with the order, the action may be dismissed for
14 failure to prosecute or failure to obey a court order. (ECF No. 30.) On February 26, 2015, the
15 Court's order was returned by the United States Postal Service as undeliverable, unable to
16 forward.

17 Despite multiple opportunities, Plaintiff has failed to file any opposition to the motion to
18 dismiss, which has been pending for nearly one year. Plaintiff has been warned on several
19 occasions that failure to respond to the motion to dismiss would result in dismissal of this action
20 for failure to prosecute.

21 In determining whether to dismiss an action for lack of prosecution, the district court is
22 required to weigh several factors: (1) the public's interest in expeditious resolution of litigation;
23 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the
24 public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
25 sanctions. *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (quotation marks and citation
26 omitted); *accord Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010); *In re*
27 *Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006);
28 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d

1 1258, 1260-61 (9th Cir. 1992)). These factors guide a court in deciding what to do, and are not
2 conditions that must be met in order for a court to take action. *In re PPA*, 460 F.3d at 1226
3 (citation omitted).

4 “The public’s interest in expeditious resolution of litigation always favors dismissal.”
5 *Pagtalunan*, 291 F.3d at 642 (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th
6 Cir. 1999)). This action has been pending for almost three years. Defendants attempted to move
7 this case towards disposition by filing a motion to dismiss in April 2014. Despite Plaintiff’s duty
8 to comply with all applicable Local Rules, Plaintiff did not file a timely opposition to
9 Defendants’ motion to dismiss. After the motion had been pending for more than seven months
10 without any opposition, the Court permitted Plaintiff an opportunity to prosecute his case by
11 ordering his opposition. Instead of filing an opposition, Plaintiff requested additional time to
12 oppose the motion. The Court granted the motion, but Plaintiff again failed to file a timely
13 opposition. As a further effort to secure Plaintiff’s compliance and allow him the opportunity to
14 prosecute his case, the Court issued an order to show cause approximately nine months after
15 Defendants moved to dismiss this action. Again, Plaintiff did not file an opposition. Instead, on
16 February 3, 2015, Plaintiff requested a further extension of time to file his opposition. The Court
17 granted the requested extension of time and discharged the order to show cause. Although
18 served on Plaintiff’s last known address, the Court’s order was returned as undeliverable, unable
19 to forward. Since February 3, 2015, Plaintiff has made no effort to contact the Court, and the
20 motion to dismiss has now been pending for approximately eleven months. The Court
21 recognizes that Plaintiff did not receive the Court’s recent order granting him an extension of
22 time to file his opposition, but Plaintiff’s failure to provide a valid address demonstrates his
23 unwillingness to prosecute this action in a timely manner. Indeed, the Court’s efforts to obtain a
24 response from Plaintiff have been repeatedly met with silence on the merits of his claims. The
25 Court cannot effectively manage its docket if a party ceases litigating the case and moving it
26 towards resolution. Thus, both the first and second factors weigh in favor of dismissal.

27 With regard to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial
28 in and of itself to warrant dismissal.” *Id.* (citing *Yourish*, 191 F.3d at 991). However, “delay

1 inherently increases the risk that witnesses' memories will fade and evidence will become stale.”
2 *Id.* In this instance, it is Plaintiff's failure to prosecute this case and to comply with the Local
3 Rules and court orders that is causing delay. Therefore, the third factor weighs in favor of
4 dismissal.

5 Because public policy favors disposition on the merits, this factor usually weighs against
6 dismissal. *Id.* at 643. However, “this factor lends little support to a party whose responsibility it
7 is to move a case toward disposition on the merits but whose conduct impedes progress in that
8 direction,” which is the case here. *In re PPA*, 460 F.3d at 1228 (internal quotation omitted).

9 Finally, as for the availability of lesser sanctions, at this stage in the proceedings there is
10 little available to the Court which would constitute a satisfactory lesser sanction while protecting
11 the Court from further unnecessary expenditure of its scarce resources. Plaintiff is proceeding in
12 *forma pauperis* in this action, making monetary sanctions of little use, and given this stage of the
13 proceedings, the preclusion of evidence or witnesses is likely to have no effect given that
14 Plaintiff has ceased litigating his case. Further, the Court repeatedly warned Plaintiff that his
15 failure to file an opposition would result in “dismissal of this action, with prejudice, for failure to
16 prosecute.” (ECF Nos. 25, 28.)

17 In summary, Plaintiff filed this action but is no longer prosecuting it. Nearly one year has
18 passed since Defendants filed their motion to dismiss, and Plaintiff has not responded, despite
19 being notified of the requirement to respond and the Court's orders specifically directing him to
20 respond. (ECF Nos. 25, 28.) The Court cannot afford to expend resources resolving unopposed
21 dispositive motions in a case a plaintiff is no longer prosecuting. Accordingly, the Court finds
22 that dismissal, without prejudice as Plaintiff failed to receive the Court's February 4, 2015 order,
23 is the appropriate sanction. The Court also finds that all pending motions should be denied
24 without prejudice.

25 Accordingly, it is **HEREBY RECOMMENDED** that:

- 26 1. This action be dismissed, without prejudice, for failure to prosecute; and
- 27 2. All pending motions be denied without prejudice.

