

1 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
2 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
3 availability of less drastic sanctions.” 779 F.2d at 1423. “The district court has the inherent
4 power sua sponte to dismiss a case for lack of prosecution.” *Id.*

5 First, the public has an interest in expeditious resolution of litigation. Here
6 plaintiff did not pursue discovery and did not cooperate with defendants to prepare the pretrial
7 statement. *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (“[T]he public’s interest
8 in expeditious resolution of litigation always favors dismissal.”). Plaintiff’s failure to timely
9 prosecute his case shows that the case will be further delayed if the court were to give him
10 additional time to file a separate pretrial statement, particularly as there is no suggestion he will
11 comply. The first *Henderson* factor weighs in favor of dismissal.

12 Second, plaintiff’s delays have interfered with management of this court’s docket.
13 The court directed him to cooperate with defendants to prepare a joint pretrial statement but
14 plaintiff has ignored that order. In addition, during the course of the litigation, plaintiff failed to
15 provide initial disclosures and then failed to oppose defendants’ motion for sanctions. *See*
16 *Yourish*, 191 F.3d at 990 (finding the district court’s interest in managing its docket strongly
17 favored dismissal because “[p]laintiffs tardily filed their motion for a written order, requiring the
18 district court to devote further time and resources to this matter rather than to the merits of an
19 amended complaint.”). This second factor also weighs strongly in favor of dismissal.

20 The third factor does not favor dismissal, as defendant has not been prejudiced by
21 plaintiff’s actions and may receive a windfall for his dilatory behavior.

22 Regarding the fourth factor, as the Ninth Circuit explained in *Morris v. Morgan*
23 *Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991), “[a]lthough there is indeed a policy favoring
24 disposition on the merits, it is the responsibility of the moving party to move towards that
25 disposition at a reasonable pace, and to refrain from dilatory and evasive tactics.” The court finds
26 this factor to favor dismissal. So far as the court can determine, plaintiff has done nothing to
27 move this case toward a disposition on the merits, after it has been pending nearly four years.
28 The case is plaintiff’s, yet he has done next to nothing to bring it to trial.

1 As for the fifth and final factor, “[t]he district court need not exhaust every
2 sanction short of dismissal before finally dismissing a case, but must explore possible and
3 meaningful alternatives.” *Henderson*, 779 F.2d at 1424 (citing *Nevijel v. North Coast Life Ins.*
4 *Co.*, 651 F.2d 671, 674 (9th Cir.1981)); *see Nevijel*, 651 F.2d at 674 (“less drastic alternatives
5 include allowing further amended complaints, allowing additional time, or insisting that appellant
6 associate experienced counsel”); *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829,
7 832 (9th Cir. 1986) (finding dismissal appropriate after the court granted several pretrial
8 conference continuances, plaintiff was not prepared for the conferences, and plaintiff was warned
9 that failure to be prepared would result in a dismissal). In this case, plaintiff has a history of
10 failing to comply with court orders and deadlines and has been subject to monetary sanctions. He
11 also has been warned that he faced dismissal if he continued to ignore his obligations in
12 connection with the litigation. The court finds this factor also favors dismissal.

13 III. CONCLUSION

14 Henderson factors one, two, four and five weigh in favor of the sanction of
15 dismissal with prejudice, and factor three does not favor dismissal. On balance, dismissal is
16 justified and the appropriate court action.

17 IT IS SO ORDERED.

18 DATED: August 28, 2013.

19
20
21 
22
23
24
25
26
27
28
UNITED STATES DISTRICT JUDGE