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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RUSSELL REGALADO, Plaintiff-Appellant, v. COUNTY OF RIVERSIDE, a municipality; et al., Defendants-Appellees.	No. 22-55235 D.C. No. 5:20-cv-01578-JGB-KK MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Jesus G. Bernal, District Judge, Presiding

Submitted December 5, 2022[**]
Pasadena, California

Before: KELLY,[***] IKUTA, and CHRISTEN, Circuit Judges.

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[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Paul J. Kelly, Jr., United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

Russell Regalado appeals the district court's sua sponte dismissal of his federal civil rights action for failure to comply with the court's order to serve certain Doe defendants (Service Order). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Because the parties are familiar with the facts, we do not recite them here. We review a dismissal pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for abuse of discretion. *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019). Five factors guide the district court's discretion and our review of it: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). Of these, the fifth factor "merit[s] special focus" when a judge dismisses sua sponte. *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998). We have emphasized that "it is not required that the district court make explicit findings in order to show that it has considered these factors and we may review the record independently to determine if the district court has abused its discretion." *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (quoting *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)). Accordingly, "the fact that the district court . . . dismissed the complaint without any

explicit analysis of these five factors d[oes] not constitute an abuse of discretion." *Applied Underwriters*, 913 F.3d at 890 n.2.

Here, although the district court did not explicitly analyze the *Henderson* factors, we conclude that the record provides ample support for the district court's exercise of discretion.

As to the expeditious resolution and docket management factors, the district court reasonably found that Regalado failed to diligently prosecute his action, such that the dismissal would serve to expeditiously resolve the litigation and promote efficient docket management. The district court did not abuse its discretion in finding that Regalado did not explain his failure to serve the Doe Defendants by the extended March 4, 2021 deadline. Regalado's primary justification for noncompliance with the Service Order is that it "became moot the same day it was filed" because his motion for extended time was filed before his Second Amended Complaint (SAC) and thus applied only to his First Amended Complaint (FAC). This argument fails, because even though technically the Service Order granted a motion that requested an extension of time to serve the FAC, in context it is clear that the Service Order was intended to grant an extension of time to serve the SAC, because it was issued five days *after* Regalado lodged the SAC. The Service Order provides, "Plaintiff must

complete service of the summons and complaint by March 4, 2021," and at the time the order issued, the SAC had been lodged.

The prejudice factor also weighs in favor of dismissal because "unreasonable delay creates a presumption of injury to appellees' defenses." *Alexander v. Pac. Mar. Ass'n*, 434 F.2d 281, 283 (9th Cir. 1970). Prejudice was properly presumed and Regalado did not explain to the district court—and does not explain here—why the presumption of prejudice is rebutted.

Although public policy favoring disposition on the merits generally weighs against dismissal, "a case that is stalled or unreasonably delayed by a party's failure to comply with deadlines and discovery obligations cannot move forward toward resolution on the merits," and in such circumstances, this factor "'lends little support' to a party whose responsibility it is to move a case toward disposition on the merits but whose conduct impedes progress in that direction." *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006) (quoting *In re Exxon Valdez*, 102 F.3d 429, 433 (9th Cir. 1996)). We observe that the record shows numerous motions and discovery requests that were either struck as improper or denied.

The final *Henderson* factor, less drastic alternatives, was plainly satisfied because the district court specifically warned Regalado of the possibility of dismissal

in its order to show cause, and we have repeatedly held that such warnings meet the "less drastic" requirement. *See, e.g.*, *Conn. Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007).

Because the *Henderson* factors weigh in favor of dismissal, the district court did not abuse its discretion by dismissing Regalado's lawsuit.

AFFIRMED.