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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN CARLOS ALVAREZ,
Plaintiff,
v.
ALEX CHAVARRIA,
Defendant.

Case No. 1:16-cv-00067-LJO-JDP

FINDINGS AND RECOMMENDATIONS
THAT THE COURT DISMISS THE CASE
FOR PLAINTIFF’S FAILURE TO
PROSECUTE AND FAILURE TO COMPLY
WITH COURT ORDERS

Plaintiff Juan Carlos Alvarez is proceeding pro se in this civil rights action brought under 42 U.S.C. § 1983. On September 12, 2017, defendant Alex Chavarria filed a motion to dismiss (Doc. No. 20.), but plaintiff did not respond within the deadline. On October 19, 2017, the court ordered plaintiff to show cause why this case should not be dismissed for his failure to prosecute. (Doc. No. 23.) Plaintiff did not respond, and the court issued two more orders to show cause, highlighting plaintiff’s failure to prosecute. (Doc. Nos. 29, 32.) Plaintiff still has not responded.

The court may dismiss a case for plaintiff’s failure to prosecute or failure to comply with a court order. *See* Fed. R. Civ. P. 41(b); *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005). Involuntary dismissal is a harsh penalty, but a district court has duties to resolve disputes expeditiously and to avoid needless burden for the parties. *See* Fed. R. Civ. P. 1; *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

1 In considering whether to dismiss the case for failure to prosecute, a court ordinarily
2 considers five factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the
3 court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
4 favoring disposition of cases on their merits and (5) the availability of less drastic sanctions.”
5 *Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010) (quoting *Henderson v. Duncan*, 779
6 F.2d 1421, 1423 (9th Cir.1986)). These heuristic factors merely guide the court’s inquiry; they
7 are not conditions precedent for dismissal. See *In re Phenylpropanolamine (PPA) Products*
8 *Liability Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006).

9 Here, the balance of the factors weigh in favor of dismissing the case. The public’s
10 interest in expeditious resolution of the case and the court’s need to manage its docket weigh in
11 favor of dismissal. See *Pagtalunan*, 291 F.3d at 642. Although delay “inherently increases the
12 risk that witnesses’ memories will fade and evidence will become stale,” this is hardly reason to
13 proceed with a case that plaintiff apparently does not wish to prosecute. *Id.* at 643. The
14 undersigned will recommend dismissal without prejudice.

15 **Findings and Recommendations**

16 The undersigned recommends that the court dismiss the case without prejudice for
17 plaintiff’s failure to prosecute and failure to comply with a court order.

18 The undersigned submits the findings and recommendations to the district judge presiding
19 over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the
20 United States District Court, Eastern District of California. Within 14 days of the service of the
21 findings and recommendations, plaintiff may file written objections to the findings and
22 recommendations with the court and serve a copy on all parties. That document must be
23 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The district judge
24 will review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C). Plaintiff’s failure
25 to file objections within the specified time may result in the waiver of rights on appeal. See
26 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

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IT IS SO ORDERED.

Dated: July 17, 2018


UNITED STATES MAGISTRATE JUDGE