



1 “In determining whether to dismiss a[n] [action] for failure to prosecute or failure to comply with  
2 a court order, the Court must weigh the following factors: (1) the public=s interest in expeditious  
3 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to  
4 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy  
5 favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir.  
6 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

7 After weighing the factors, we conclude that dismissal is appropriate. ““The public’s  
8 interest in expeditious resolution of litigation always favors dismissal.”” *Id.* (quoting *Yourish v.*  
9 *California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). As to the court’s need to manage its  
10 docket, “[t]he trial judge is in the best position to determine whether the delay in a particular case  
11 interferes with docket management and the public interest.... It is incumbent upon the Court to  
12 manage its docket without being subject to routine noncompliance of litigants....” *Pagtalunan*,  
13 291 F.3d at 639. As described above, plaintiff was granted leave to amend within 30 days of the  
14 court’s screening and provided with legal standards that could assist with the amendment. ECF  
15 No. 16. Plaintiff failed to file an amended complaint. The non-compliance is delaying this case  
16 and interfering with docket management. Therefore, the first two factors weigh in favor of  
17 dismissal.

18 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in  
19 and of itself to warrant dismissal.” *Id.* at 642 (citing *Yourish*, 191 F.3d at 991). However, “delay  
20 inherently increases the risk that witnesses= memories will fade and evidence will become stale,”  
21 *id.* at 643, and as described above, it is plaintiff’s failure to comply with a court order and to  
22 prosecute this case that is causing delay. Therefore, the third factor weighs in favor of dismissal.

23 As for the availability of lesser sanctions, at this stage in the proceedings there is little  
24 available to the court which would constitute a satisfactory lesser sanction while protecting the  
25 court from further unnecessary expenditure of its scarce resources. Monetary sanctions are of  
26 little use, considering plaintiff’s incarceration and in forma pauperis status, and given the stage of  
27 these proceedings, the preclusion of evidence or witnesses is not available. Additionally, because  
28 the dismissal being considered in this case is without prejudice, the court is stopping short of

1 using the harshest possible sanction of dismissal with prejudice.

2 Finally, because public policy favors disposition on the merits, this factor weighs against  
3 dismissal. *Id.*

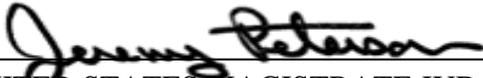
4 Accordingly:

- 5 1. The clerk of the court is directed to randomly assign a district judge to this case;
- 6 2. It is recommended that:
  - 7 a. this case be dismissed for failure to state a claim, failure to prosecute, and  
8 failure to comply with court orders; and
  - 9 b. the clerk be directed to close this case.

10 These findings and recommendations will be submitted to the U.S. district judge assigned  
11 to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days of  
12 service of these findings and recommendations, plaintiff may file written objections with the  
13 court. If plaintiff files such objections, he should do so in a document captioned “Objections to  
14 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
15 objections within the specified time may result in the waiver of rights on appeal. See *Wilkerson v.*  
16 *Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394  
17 (9th Cir. 1991)).

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19 IT IS SO ORDERED.

20 Dated: November 23, 2018

  
UNITED STATES MAGISTRATE JUDGE

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