1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 Case No. 1:18-cv-00430-LJO-JDP RICKY CALDWELL, 12 FINDINGS AND RECOMMENDATIONS Plaintiff. THAT THE COURT DISMISS THE CASE 13 v. FOR PLAINTIFF'S FAILURES TO PROSECUTE, TO COMPLY WITH COURT 14 CALIFORNIA DEPARTMENT OF ORDERS, AND TO PAY THE FILING FEE CORRECTIONS AND 15 REHABILITATION, et al., FOURTEEN-DAY DEADLINE 16 Defendants. 17 18 Ricky Caldwell ("plaintiff") is a state prisoner proceeding without counsel in this civil 19 rights action brought under 42 U.S.C. § 1983. On March 29, 2018, the court issued an order 20 requiring plaintiff, within forty-five (45) days, to submit an application to proceed in forma 21 pauperis or payment of the \$400.00 filing fee. ECF No. 1. Plaintiff did not respond by the 22 deadline, notwithstanding the court order. 23 On August 24, 2018, the court ordered plaintiff to show cause why this case should not be 24 dismissed for failure to comply with a court order. ECF No. 6. Plaintiff failed to respond by the 25 deadline, once again disobeying the court's order. 26 The court may dismiss a case for plaintiff's failure to prosecute or failure to comply with a 27 court order. See Fed. R. Civ. P. 41(b); Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 28 683, 689 (9th Cir. 2005). Involuntary dismissal is a harsh penalty, but a district court has duties

1 2

3

4

5

6

7

8

9

10

11

12

Fed. R. Civ. P. 1; *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

Liability Litig., 460 F.3d 1217, 1226 (9th Cir. 2006).

to resolve disputes expeditiously and to avoid needless burden for the parties. See

Turning to the risk of prejudice, pendency of a lawsuit, on its own, is not sufficiently

prejudicial to warrant dismissal. *Id.* (citing *Yourish*, 191 F.3d at 991). However, delay inherently

increases the risk that witnesses' memories will fade and evidence will become stale, id. at 643,

and it is plaintiff's failure to prosecute this case that is causing delay. Therefore, the third factor

As for the availability of lesser sanctions, at this stage in the proceedings there is little

available to the court that would constitute a satisfactory lesser sanction while protecting the court

from further unnecessary expenditure of its scarce resources. Monetary sanctions are of little use,

dismissal is a harsh sanction, the court has already found that plaintiff's complaint failed to state a

2

considering plaintiff's incarceration and apparent inability to pay the filing fee, and—given the

stage of these proceedings—the preclusion of evidence or witnesses is not available. While

In considering whether to dismiss the case for failure to prosecute, a court ordinarily

considers five factors: "(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."

Omstead v. Dell, Inc., 594 F.3d 1081, 1084 (9th Cir. 2010) (quoting Henderson v. Duncan, 779

F.2d 1421, 1423 (9th Cir.1986)). These heuristic factors merely guide the court's inquiry; they

are not conditions precedent for dismissal. See In re Phenylpropanolamine (PPA) Products

"The public's interest in expeditious resolution of litigation always favors dismissal."

Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly, this factor weighs in favor of

dismissal.

13 14

15 16

17

18 19

20 21

22 23

> 24 25

26

28

27

claim.

Finally, because public policy favors disposition on the merits, this factor weighs against

dismissal. Id.

weighs in favor of dismissal.

After weighing the factors, including the court's need to manage its docket, the court finds that dismissal is appropriate. The court recommends dismissal without prejudice.

Findings and Recommendations

The court recommends that the case be dismissed without prejudice for plaintiff's failures to prosecute, to comply with court orders, and to pay the filing fee.

The undersigned submits these findings and recommendations to the U.S. district judge presiding over the case under 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within 14 days of the service of the findings and recommendations, the parties may file written objections to the findings and recommendations with the court and serve a copy on all parties. The document containing the objections must be captioned "Objections to Magistrate Judge's Findings and Recommendations." The presiding district judge will then review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C). The parties' failure to file objections within the specified time may waive their rights on appeal. See Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014).

IT IS SO ORDERED.

November 1, 2018 Dated: