

1 to resolve disputes expeditiously and to avoid needless burden for the parties. *See*
2 Fed. R. Civ. P. 1; *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

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

11 “The public’s interest in expeditious resolution of litigation always favors dismissal.”
12 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (quoting *Yourish v. California*
13 *Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly, this factor weighs in favor of
14 dismissal.

15 Turning to the risk of prejudice, pendency of a lawsuit, on its own, is not sufficiently
16 prejudicial to warrant dismissal. *Id.* (citing *Yourish*, 191 F.3d at 991). However, delay inherently
17 increases the risk that witnesses’ memories will fade and evidence will become stale, *id.* at 643,
18 and it is plaintiff’s failure to prosecute this case that is causing delay. Therefore, the third factor
19 weighs in favor of dismissal.

20 As for the availability of lesser sanctions, at this stage in the proceedings there is little
21 available to the court that would constitute a satisfactory lesser sanction while protecting the court
22 from further unnecessary expenditure of its scarce resources. Monetary sanctions are of little use,
23 considering plaintiff’s incarceration and apparent inability to pay the filing fee, and—given the
24 stage of these proceedings—the preclusion of evidence or witnesses is not available. While
25 dismissal is a harsh sanction, the court has already found that plaintiff’s complaint failed to state a
26 claim.

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

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

3 **Findings and Recommendations**

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

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

15
16 IT IS SO ORDERED.

17 Dated: November 1, 2018

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19 UNITED STATES MAGISTRATE JUDGE