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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAYMOND C. WATKINS,

 Plaintiff,

 v.

TUOLUMNE COUNTY, *et al.*,

 Defendants.

Case No. 1:18-cv-00787-JDP

FINDINGS AND RECOMMENDATIONS
THAT CASE BE DISMISSED FOR FAILURE
TO STATE A CLAIM, FAILURE TO
PROSECUTE, AND FAILURE TO COMPLY
WITH A COURT ORDER

OBJECTIONS DUE IN FOURTEEN DAYS

ORDER DIRECTING CLERK OF COURT TO
ASSIGN CASE TO DISTRICT JUDGE

Plaintiff is a state prisoner proceeding without counsel in this civil rights action pursuant to 42 U.S.C. § 1983. On April 2, 2019, I screened plaintiff’s complaint and found that he failed to state a claim. ECF No. 9. I ordered plaintiff to amend his complaint and warned that failure to comply with the order would result in dismissal of this action. *See id.* at 6. Plaintiff has not filed an amended complaint.

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 court has a duty to resolve disputes expeditiously. *See Fed. R. Civ. P. 1; Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

1 In considering whether to dismiss a 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)). The fourth factor weighs against dismissal. But dismissal
7 would promote expeditious resolution, *see Pagtalunan*, 291 F.3d at 642, and would allow our
8 overburdened court to manage its docket more effectively. Further delay increases the risk that
9 memories will fade and evidence will be lost, and at this stage in the proceeding there is no
10 satisfactory lesser sanction that would protect the court’s scarce resources. Therefore, I find that
11 the first, second, third, and fifth factors weigh in favor of dismissal, and I recommend dismissal
12 without prejudice on that basis.

13 As more thoroughly discussed in my screening order, plaintiff has failed to state a claim
14 against defendants, which provides an additional basis for dismissing this case. *See* ECF No. 9.

15 **Order**

16 The clerk of court is directed to assign this case to a district judge, who will preside over
17 this case. The undersigned will remain as the magistrate judge assigned to the case.

18 **Recommendations**

19 I recommend that the case be dismissed for plaintiff’s failures to state a claim, prosecute,
20 and comply with a court order. I submit these findings and recommendations to the U.S. district
21 judge presiding over the case under 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within
22 fourteen days of the service of the findings and recommendations, the parties may file written
23 objections to the findings and recommendations with the court and serve a copy on all parties.
24 The document containing the objections must be captioned “Objections to Magistrate Judge’s
25 Findings and Recommendations.” The presiding district judge will then review the findings and
26 recommendations under 28 U.S.C. § 636(b)(1)(C).

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IT IS SO ORDERED.

Dated: October 29, 2019


UNITED STATES MAGISTRATE JUDGE

No. 204