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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHELLYN JONES,

 Plaintiff,

 v.

DEPARTMENT OF CORRECTIONS
REHABILITATION,

 Defendant.

Case No. 1:18-cv-01308-AWI-JDP

FINDINGS AND RECOMMENDATIONS TO
DISMISS CASE FOR PLAINTIFF’S FAILURES
TO PROSECUTE AND TO COMPLY WITH
COURT ORDERS

OBJECTIONS, IF ANY, DUE IN FOURTEEN
DAYS

Plaintiff is a former state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. On October 4, 2018, the court ordered plaintiff to file a first amended complaint and to file a completed *in forma pauperis* application or pay the \$400.00 filing fee in full. ECF No. 4. Plaintiff has neither paid the filing fee nor filed anything in response to the court’s order. Accordingly, on March 5, 2019, the court issued plaintiff an order to show cause why this case should not be dismissed for failure to comply with a court order and failure to prosecute. ECF No. 7. Plaintiff had thirty days to respond but failed to do so, thereby disobeying the court’s order.

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

1 683, 689 (9th Cir. 2005). Involuntary dismissal is a harsh penalty, but a district court has duties
2 to resolve disputes expeditiously and to avoid needless burden for the parties. *See*
3 Fed. R. Civ. P. 1; *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

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

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

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

21 As for the availability of lesser sanctions, at this stage in the proceedings there is little
22 available to the court that would constitute a satisfactory lesser sanction while protecting the court
23 from further unnecessary expenditure of its scarce resources. Monetary sanctions are of little use,
24 considering plaintiff’s apparent inability to pay the filing fee, and—given the stage of these
25 proceedings—the preclusion of evidence or witnesses is not available. Accordingly, the fourth
26 factor also weighs in favor of dismissal.

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

14
15 IT IS SO ORDERED.

16 Dated: April 12, 2019

17 
18 UNITED STATES MAGISTRATE JUDGE