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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN GARCIA,
Plaintiff,
v.
PROCTER AND GAMBLE COMPANY,
Defendant.

No. 2:17-cv-02591-MCE-JDP

FINDINGS AND RECOMMENDATIONS
THAT THE COURT DISMISS THIS CASE
FOR PLAINTIFF'S FAILURES TO
PROSECUTE AND TO COMPLY WITH
COURT ORDERS

OBJECTIONS DUE WITHIN 14 DAYS

On December 1, 2020, the court issued an order resetting an initial scheduling conference for December 17, 2020 and directing the parties to file a joint status report seven days prior. ECF No. 15. Defendant timely filed a status report. ECF No. 17. Plaintiff, however, failed to separately file his own status report or join in defendant's filing. On December 17, 2020, the court moved the initial scheduling conference and ordered plaintiff to show cause why sanctions should not be imposed for his failure to comply with the court's order. ECF No. 18. Plaintiff has not responded to the court's order to show cause and the time to do so has now passed.

To manage its docket effectively, the court imposes deadlines on litigants and requires litigants to meet those deadlines. 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.*

1 *U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005). Involuntary dismissal is a harsh penalty, but
2 a district court has a duty to administer justice expeditiously and avoid needless burden for the
3 parties. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002); Fed. R. Civ. P. 1.

4 In considering whether to dismiss the 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 *in forma pauperis* status, and the preclusion of evidence or witnesses is not
25 available. While dismissal is a harsh sanction, no lesser sanction is available.

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

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

3 **Findings and Recommendations**

4 Accordingly, I recommend that the case be dismissed without prejudice for plaintiff's
5 failures to prosecute and to comply with court orders.

6 I submit these findings and recommendations to the U.S. district judge presiding over the
7 case under 28 U.S.C. § 636(b)(1)(B) and Local Rule 304. Within fourteen days of the service of
8 the findings and recommendations, the parties may file written objections to the findings and
9 recommendations with the court and serve a copy on all parties. The document containing the
10 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).

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14 IT IS SO ORDERED.

15 Dated: January 13, 2021

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18 JEREMY D. PETERSON
19 UNITED STATES MAGISTRATE JUDGE
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