

DEC 17 2015

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FARRAMARZ RAFAEL,

Plaintiff - Appellant,

v.

SARA HEZHGIAEIAN,

Defendant - Appellee.

No. 12-55642

D.C. No. 2:10-cv-08146-VBF-SS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Submitted December 7, 2015**
Pasadena, California

Before: REINHARDT, NOONAN, and NGUYEN, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes that this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Plaintiff Farramarz Rafael appeals the district court's denial of his motion to vacate dismissal pursuant to Federal Rule of Civil Procedure 60(b). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Applying the *Pioneer-Briones* factors, we find that the district court did not err in concluding that Rafael failed to show excusable neglect. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997). As the district court noted, Rafael had multiple opportunities to avoid dismissal, or promptly seek to vacate the dismissal, and he failed to do so. Rafael failed to respond to the court's Order to Show Cause, and he waited nearly a year after dismissal before filing a motion to set aside the judgment. The district court also did not err in finding that counsel's proffered reasons for the delay—the press of business and a busy litigation schedule—were insufficient to excuse the neglect.

AFFIRMED.