

FILED

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GIL MEDINA, an individual,

Plaintiff-Appellant,

v.

GLORIA HINOJOSA, an individual;
AMSTEL EISENSTADT FRAZIER AND
HINOJOSA TALENT AGENCY, a
California corporation; ROBERT
RODRIGUEZ, an individual; MACHETE
KILLS, LLC, a Texas limited liability
company; EL CHINGON, INC., a Texas
corporation; TROUBLEMAKER
STUDIOS, L.P., a Texas limited
partnership; QUICK DRAW
PRODUCTIONS, LLC, a Texas limited
liability company,

Defendants-Appellees.

No. 19-56042

D.C. No.

2:14-cv-08797-ODW-AGR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Otis D. Wright II, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: FERNANDEZ, SILVERMAN, and N.R. SMITH, Circuit Judges.

Gil Medina appeals pro se from the district court's judgment in a business tort action he and his company, ITN Flix, LLC (ITN),¹ brought against the Rodriguez Defendants² and the Hinojosa Defendants.³ The district court granted in part the Rodriguez Defendants' anti-SLAPP⁴ motion to strike portions of Medina's original complaint, and dismissed the action for failure to prosecute. We affirm.

The district court did not abuse its discretion when it dismissed the action for failure to prosecute. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 986 (9th Cir. 1999); Fed. R. Civ. P. 41(b); *see also United States v. Hinkson*, 585 F.3d 1247, 1261–62 (9th Cir. 2009) (en banc). Medina does not dispute that his 14-month delay in filing an amended complaint was unreasonable, and the district court correctly identified and reasonably weighed the five relevant factors before

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

¹ We previously dismissed ITN's appeal.

² Robert Rodriguez; Machete Kills, LLC; El Chingon, Inc.; Troublemaker Studios, L.P.; and Quick Draw Productions, LLC.

³ Gloria Hinojosa and Amsel, Eisenstadt, Frazier & Hinojosa Talent Agency.

⁴ Strategic lawsuit against public participation. *See* Cal. Civ. Proc. Code § 425.16(b)(1).

dismissing. *See Omstead v. Dell, Inc.*, 594 F.3d 1081, 1084 (9th Cir. 2010), *overruled on other grounds by Langere v. Verizon Wireless Servs., LLC*, 983 F.3d 1115, 1117 (9th Cir. 2020). The district court correctly recognized that “[t]he public’s interest in expeditious resolution of litigation always” weighs in favor of dismissal. *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). Likewise, the risk of prejudice to the defendants weighed in favor of dismissal, particularly in light of Medina’s unreasonable and unexcused delay. *See Hernandez v. City of El Monte*, 138 F.3d 393, 400–01 (9th Cir. 1998); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 131 (9th Cir. 1987). Medina agreed that the district court was in the best position to evaluate the effects on its docket,⁵ and we decline to entertain Medina’s newly-minted argument on this factor.⁶ Finally, the district court expressly considered less-drastic alternatives to dismissal,⁷ and Medina has not argued that any other sanction was more suitable.⁸ Because the district court reasonably determined that four factors weighed in favor of dismissal, it did not abuse its discretion by dismissing the case. *See Yourish*, 191 F.3d at 990.

⁵ *Yourish*, 191 F.3d at 991.

⁶ *See Crawford v. Lungren*, 96 F.3d 380, 389 n.6 (9th Cir. 1996).

⁷ *Anderson v. Air W. Inc.*, 542 F.2d 522, 525–26 (9th Cir. 1976).

⁸ *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999); *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994).

In light of the dismissal for failure to prosecute, we decline to review the district court's order granting in part the Rodriguez Defendants' anti-SLAPP motion. *See Al-Torki v. Kaempfen*, 78 F.3d 1381, 1386 (9th Cir. 1996); *see also Hyan v. Hummer*, 825 F.3d 1043, 1046–47 (9th Cir. 2016) (per curiam); *Hall v. City of Los Angeles*, 697 F.3d 1059, 1070–71 (9th Cir. 2012).

AFFIRMED.