

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 9 2022

FOR THE NINTH CIRCUIT

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

MATHEW RENDON, individually,

No. 21-56163

Plaintiff-Appellant,

D.C. No.

v.

8:21-cv-00190-JLS-KES

COUNTY OF ORANGE; et al.,

MEMORANDUM*

Defendants-Appellees,

and

I. ZUMAR; DOES, 1 to 30,

Defendants.

Appeal from the United States District Court
for the Central District of California
Josephine L. Staton, District Judge, Presiding

Submitted November 7, 2022**
Portland, Oregon

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

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

Before: BUMATAY and SANCHEZ, Circuit Judges, and BAKER,^{***} International Trade Judge.

Mathew Rendon appeals the district court's order granting the defendants' motion to dismiss his suit asserting claims under 42 U.S.C. § 1983 and state law because he failed to file a timely response. We have appellate jurisdiction under 28 U.S.C. § 1291 and we affirm.

Defendants moved to dismiss this action, one of multiple unsuccessful actions Rendon filed following his arrest in connection with several robberies. Rendon received a three-month deferral of the hearing date, so under the district court's local rules his opposition brief was due September 3, 2021. Rather than filing on or before that date, Rendon's counsel moved for a 14-day continuance in order to watch his son make his minor league baseball debut in Illinois. On September 14, 2021, the district court denied the motion for "no showing of good cause." Counsel nevertheless filed an untimely response to the motion to dismiss three days later, which the district court struck as untimely. The court granted the motion to dismiss because "the failure to file any required document, or the failure to file it within the deadline, may be deemed consent to the granting or denial of the motion."

^{***} The Honorable M. Miller Baker, Judge for the United States Court of International Trade, sitting by designation.

We review a dismissal for failure to comply with a district court’s local rules for an abuse of discretion. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). A district court must consider five factors before dismissing:

(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases [on] their merits; and (5) the availability of less drastic sanctions.

Id. “If the district court does not consider these factors explicitly, we review the record independently to determine whether the district court abused its discretion.”

Id. at 53–54. We “may affirm a dismissal where at least four factors support dismissal, or where at least three factors strongly support dismissal.” *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (cleaned up). We conclude that four of the five factors weigh in favor of dismissal.¹

(1) “[D]ismissal serves the public interest in expeditious resolution of litigation . . . when a plaintiff’s noncompliance has caused the action to come to a halt.”

In re PPA Prods. Liab. Litig., 460 F.3d 1217, 1234 (9th Cir. 2006).

¹ The fourth factor—public policy favoring disposition on the merits—is neutral. Despite the public policy against dismissal, “this factor lends little support to a party whose responsibility it is to move a case toward disposition on the merits but whose conduct [by not meeting deadlines] impedes progress in that direction.” *PPA Prods. Liab. Litig.*, 460 F.3d at 1228 (cleaned up).

(2) A district court's authority to dismiss a litigant's claims for failure to prosecute or to comply with court rules and orders is well-established. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992).

(3) "The law presumes injury from unreasonable delay." *In re Eisen*, 31 F.3d 1447, 1452 (9th Cir. 1994). The party causing the delay may rebut the presumption with a *non-frivolous* excuse. *Id.* at 1453. Here, Rendon's excuse for not meeting a deadline that had already been extended 90 days at his request was frivolous: Counsel chose to attend a ballgame instead of timely filing his client's response to the motion to dismiss.

(4) "Warning that failure to obey a court order will result in dismissal can itself meet the 'consideration of alternatives' requirement." *PPA Prods. Liab. Litig.*, 460 F.3d at 1229. Here, the district court had warned Rendon that failure to comply with court deadlines could result in dismissal. That warning independently sufficed to satisfy the consideration of alternatives requirement.²

AFFIRMED.

² Shortly after the district court dismissed this suit, Rendon filed another action in California state court. Appellees have moved that we take judicial notice of this new state court suit. We deny that motion as moot.