

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

MARCIAL PLATA,)	1:06-cv-01023-GSA-PC
)	
Plaintiff,)	ORDER DISMISSING CASE, WITHOUT
)	PREJUDICE, FOR FAILURE TO OBEY A
vs.)	COURT ORDER
)	(Doc. 57.)
WOODFORD, et al.,)	
)	ORDER FOR CLERK TO CLOSE CASE
Defendants.)	
)	

On August 12, 2011, the Court issued an order extending the deadline until September 30, 2011, for Plaintiff to file a response to Defendants' motion for terminating sanctions. (Doc. 57.) The deadline

¹This action also proceeds against a Doe Defendant; however, Plaintiff has not identified this defendant or provided information to enable service of process.

1 expired more than two weeks ago, and Plaintiff has not filed a response to Defendants' motion or
2 otherwise responded to the Court's order.

3 In determining whether to dismiss this action for failure to comply with the directives set forth
4 in its order, “the Court must weigh the following factors: (1) the public’s interest in expeditious
5 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to
6 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring
7 disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing
8 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

9 ““The public’s interest in expeditious resolution of litigation always favors dismissal,”” id.
10 (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the action has
11 been pending for more than five years. Plaintiff's failure to respond to the Court's order may reflect
12 Plaintiff's disinterest in prosecuting this case. In such an instance, the Court cannot continue to expend
13 its scarce resources assisting a litigant who will not help himself by defending his case against a motion
14 for terminating sanctions. Thus, both the first and second factors weigh in favor of dismissal.

15 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in and of
16 itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently increases the risk
17 that witnesses’ memories will fade and evidence will become stale,” id., and it is Plaintiff's failure to
18 defend against defendants' motion for terminating sanctions that is causing delay. Therefore, the third
19 factor weighs in favor of dismissal.

20 As for the availability of lesser sanctions, at this stage in the proceedings there is little available
21 to the Court which would constitute a satisfactory lesser sanction while protecting the Court from further
22 unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this action,
23 making monetary sanctions of little use, and given the early stage of these proceedings, the preclusion
24 of evidence or witnesses is not available. However, inasmuch as the dismissal in this case is without
25 prejudice, the Court is stopping short of issuing the harshest possible sanction of dismissal with
26 prejudice.

27 ///

1 Finally, because public policy favors disposition on the merits, this factor will always weigh
2 against dismissal. Id. at 643.

3 Therefore, based on the foregoing analysis, this action shall be dismissed without prejudice.

4 Accordingly, IT IS HEREBY ORDERED that:

- 5 1. This action is dismissed, without prejudice, based on Plaintiff's failure to obey the
6 Court's order of August 12, 2011; and
- 7 2. The Clerk is directed to close this case.

8
9 IT IS SO ORDERED.

10 **Dated: October 17, 2011**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE