(PC) Hunter v. Yo	oungblood et al Il	Doc. 23
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5	IN THE UNITED STATES DISTRICT COURT	
6	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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8	LEROY DEWITT HUNTER,) 1:07-cv-00373-LJO-GSA-PC
9	Plaintiff,	FINDINGS AND RECOMMENDATIONS TO DISMISS CASE FOR FAILURE TO OBEY A COURT ORDER (Doc. 19.) OBJECTIONS, IF ANY, DUE IN THIRTY DAYS
10	vs.	
11	YOUNGBLOOD, et al.,	
12	Defendants.	
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14	On September 3, 2009, the court issued an order forwarding service documents to plaintiff for	
15	completion and return within thirty (30) days. The thirty (30) day period has now expired, and plaintiff	
16	has not returned the service documents or otherwise responded to the court's order.	
17	In determining whether to dismiss this action for failure to comply with the directives set forth	
18	in its order, "the Court must weigh the following factors: (1) the public's interest in expeditious	
19	resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to	
20	defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring	
21	disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing	
22	Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).	
23	"The public's interest in expeditious resolution of litigation always favors dismissal," id.	
24	(quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the action has	
25	been pending for over two years. Plaintiff's failure to return the service documents may reflect Plaintiff's	
26	disinterest in prosecuting this case. In such an instance, the Court cannot continue to expend its scarce	
27	resources assisting a litigant who will not help himself by completing and returning the documents	
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required to effect service in his own action. Thus, both the first and second factors weigh in favor of dismissal.

Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in and of itself to warrant dismissal." <u>Id</u>. (citing <u>Yourish</u> at 991). However, "delay inherently increases the risk that witnesses' memories will fade and evidence will become stale," <u>id</u>., and it is Plaintiff's failure to complete and return service documents that is causing delay. Therefore, the third factor weighs in favor of dismissal.

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

Finally, because public policy favors disposition on the merits, this factor will always weigh against dismissal. <u>Id</u>. at 643.

Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based on plaintiff's failure to obey the court's order of September 3, 2009.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within thirty days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: October 29, 2009 /s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE

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