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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

|                     |   |                                    |
|---------------------|---|------------------------------------|
| ROBIN GILLEN STARR, | ) | 1:11-cv-02108-AWI-GSA-PC           |
|                     | ) |                                    |
| Plaintiff,          | ) | FINDINGS AND RECOMMENDATIONS TO    |
|                     | ) | DISMISS CASE FOR FAILURE TO OBEY A |
| vs.                 | ) | COURT ORDER                        |
|                     | ) | (Doc. 23.)                         |
| CDCR,               | ) |                                    |
|                     | ) | OBJECTIONS, IF ANY, DUE IN THIRTY  |
| Defendant.          | ) | DAYS                               |
| _____               | ) |                                    |

On June 26, 2012, the court issued an order granting Plaintiff's motion for leave to file an amended complaint, allowing Plaintiff thirty days in which to file the amended complaint. (Doc. 23.) More than sixty days have passed, and plaintiff has not filed an amended complaint or otherwise responded to the court's order.

In determining whether to dismiss this action for failure to comply with the directives set forth in its order, "the Court must weigh the following factors: (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 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

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1           “‘The public’s interest in expeditious resolution of litigation always favors dismissal,’” *id.*  
2 (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the action has  
3 been pending since December 2011. Plaintiff’s failure to respond to the Court’s order may reflect  
4 Plaintiff’s willingness to proceed with the original Complaint, but Plaintiff has not informed the Court.  
5 In such an instance, the Court cannot continue to expend its scarce resources assisting a litigant who will  
6 not help himself by submitting the amended complaint, or otherwise responding to the Court’s order, so  
7 that his case can proceed. Thus, both the first and second factors weigh in favor of dismissal.

8           Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in and of  
9 itself to warrant dismissal.” *Id.* (citing *Yourish* at 991). However, “delay inherently increases the risk  
10 that witnesses’ memories will fade and evidence will become stale,” *id.*, and it is Plaintiff’s failure to  
11 respond to the Court’s order that is causing delay. Therefore, the third factor weighs in favor of  
12 dismissal.

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

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

22           Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based on  
23 plaintiff’s failure to obey the court’s order of June 26, 2012.

24           These findings and recommendations are submitted to the United States District Judge assigned  
25 to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being  
26 served with these findings and recommendations, plaintiff may file written objections with the court.  
27 Such a document should be captioned "Objections to Magistrate Judge's Findings and  
28

1 Recommendations." Plaintiff is advised that failure to file objections within the specified time may  
2 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 IT IS SO ORDERED.

4 **Dated: September 25, 2012**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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