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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

EARNEST CASSELL WOODS II,
Plaintiff,
v.
DARRELL ADAMS, et al.,
Defendants.

1:13-cv-00621-DAD-GSA-PC

FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDER
(ECF No. 28.)

OBJECTIONS, IF ANY, DUE IN
FOURTEEN (14) DAYS

Earnest Cassell Woods II (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action under 42 U.S.C. § 1983. Plaintiff filed his Complaint commencing this action on April 29, 2013. (ECF No. 1.)

On October 31, 2017, the Court issued an order requiring Plaintiff to pay the \$400.00 filing fee for this action in full within thirty days. (ECF No. 28.) The thirty day time period has now expired, and Plaintiff has not made any payment 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

1 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
2 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d
3 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

4 ““The public’s interest in expeditious resolution of litigation always favors dismissal,””
5 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
6 action has been pending since April 29, 2013. Plaintiff’s failure to respond to the Court’s order
7 may reflect Plaintiff’s disinterest in prosecuting this case or inability to pay the filing fee. In
8 such an instance, the Court cannot continue to expend its scarce resources assisting a litigant
9 who will not or cannot resolve payment of the filing fee for his lawsuit. Thus, both the first and
10 second factors weigh in favor of dismissal.

11 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
12 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
13 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and
14 it is Plaintiff’s failure to pay the filing fee for this action that is causing delay. Therefore, the
15 third factor weighs in favor of dismissal.

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

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

25 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed based
26 on Plaintiff’s failure to obey the Court’s order of October 31, 2017. These findings and
27 recommendations are submitted to the United States District Judge assigned to the case,
28 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after the

1 date of service of these findings and recommendations, Plaintiff may file written objections
2 with the court. Such a document should be captioned “Objections to Magistrate Judge’s
3 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
4 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d
5 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

6
7 IT IS SO ORDERED.

8 Dated: December 15, 2017

/s/ Gary S. Austin
9 UNITED STATES MAGISTRATE JUDGE