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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 BILAL AHDOM,

12 Plaintiff,

13 vs.

14 C. ETCHEBEHERE, et al.,

15 Defendants.
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1:13-cv-01623-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR PLAINTIFF'S
FAILURE TO COMPLY WITH COURT
ORDERS
(Docs. 5, 10.)

OBJECTIONS, IF ANY, DUE IN THIRTY
DAYS

17 On October 10, 2013 and November 25, 2013, the court issued orders requiring Plaintiff
18 to sign and return the court's consent/decline form, indicating whether he will consent to
19 Magistrate Judge jurisdiction in this case, within thirty days. (Docs. 5, 10.) The thirty day
20 deadlines have expired, and plaintiff has not signed and returned the court's form or otherwise
21 responded to the court's order.

22 In determining whether to dismiss this action for failure to comply with the directives
23 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in
24 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
25 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
26 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d
27 639, 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,”
2 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
3 action has been pending since October 9, 2013. Plaintiff’s failure to respond to the Court’s
4 order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court
5 cannot continue to expend its scarce resources assisting a litigant who will not help himself by
6 returning the court’s form pursuant to the court’s orders. Thus, both the first and second factors
7 weigh in favor of dismissal.

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

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

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

22 Accordingly, the court **HEREBY RECOMMENDS** that this action be dismissed
23 without prejudice, based on plaintiff’s failure to obey the court’s orders of October 10, 2013 and
24 November 25, 2013.

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

1 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
2 within the specified time may waive the right to appeal the District Court's order. Martinez v.
3 Ylst, 951 F.2d 1153 (9th Cir. 1991).
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6 IT IS SO ORDERED.
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8 Dated: February 4, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE
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