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

BRYAN E. RANSOM,

Plaintiff,

vs.

McCABE, et al.,

Defendants.

1:13-cv-01779-DAD-GSA-PC

FINDINGS AND RECOMMENDATIONS TO
DISMISS CASE FOR FAILURE TO OBEY COURT
ORDER
(ECF No. 84.)

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

I. BACKGROUND

Bryan E. Ransom (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983.

On August 16, 2017, the court issued an order requiring Plaintiff to respond in writing within thirty days, showing cause why defendant Brooks should not be dismissed from this action. (ECF No. 84.) Plaintiff was forewarned that his failure to comply with the court’s order would result in a recommendation that this action be dismissed. (Id. at 2 ¶2.) The thirty-day time period has now expired and Plaintiff has not 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

1 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d
2 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

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

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

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

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

24 Accordingly, the court **HEREBY RECOMMENDS** that this action against Defendant
25 Brooks be dismissed based on Plaintiff’s failure to obey the court’s order of August 16, 2017.
26 These findings and recommendations are submitted to the United States District Judge assigned
27 to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
28 **days** of the date of service of these findings and recommendations, any party may file written

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

6
7 IT IS SO ORDERED.

8 Dated: September 29, 2017

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