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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 RECOMMENDATION TO
DISMISS CASE FOR FAILURE TO COMPLY
WITH COURT ORDER
(ECF No. 92.)

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 November 2, 2017, the court issued an order requiring Plaintiff to submit a completed USM-285 form for service upon Nurse Faldon, within fourteen days. (ECF No. 94.) The fourteen-day time period has now expired, and Plaintiff has not submitted the USM-285 form or otherwise responded to the court’s order.

II. DISMISSAL FOR FAILURE TO COMPLY WITH COURT 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 November 5, 2013. Plaintiff’s failure to comply with the court’s
7 order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the court
8 cannot continue to expend its scarce resources assisting a litigant who will not submit the
9 USM-285 form required for service upon defendant Faldon. Thus, both the first and second
10 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 submit the USM-285 form that is causing delay. Therefore, the third
15 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. Given that Plaintiff is a
19 prisoner proceeding *pro se* who has not paid the filing fee for this action, the court finds
20 monetary sanctions of little use, and given the early stage of these proceedings, the preclusion
21 of evidence or witnesses is not available. However, inasmuch as the dismissal being
22 considered in this case is without prejudice, the court is stopping short of issuing the harshest
23 possible sanction of dismissal with prejudice.

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

26 **III. CONCLUSION AND RECOMMENDATIONS**

27 Based on the foregoing, the court **HEREBY RECOMMENDS** that this action be
28 dismissed based on Plaintiff’s failure to obey the court’s order of November 2, 2017.

