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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DALE OWEN DUSTIN,
Plaintiff,
vs.
C. GIPSON, et al.,
Defendants.

1:14-cv-01405-LJO-GSA-PC
FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDER
(ECF No. 27.)
OBJECTIONS, IF ANY, DUE IN THIRTY
(30) DAYS

On August 20, 2015, the court issued an order requiring Plaintiff to file a First Amended Complaint within thirty days. (ECF No. 27.) The thirty day period has now expired, and Plaintiff has not filed a First 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)).

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 June 25, 2014. Plaintiff’s failure to respond to the court’s order
4 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the court cannot
5 continue to expend its scarce resources assisting a litigant who will not help himself by
6 complying with the court’s order to amend his complaint. Thus, both the first and second
7 factors 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 file the First Amended Complaint that is causing delay. Therefore, the
12 third 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 based
23 on Plaintiff’s failure to obey the court’s order of August 20, 2015. These findings and
24 recommendations are submitted to the United States District Judge assigned to the case,
25 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after being
26 served with these findings and recommendations, Plaintiff may file written objections with the
27 court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
28 Recommendations.” Plaintiff is advised that failure to file objections within the specified time

1 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th
2 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

3
4 IT IS SO ORDERED.

5 Dated: October 8, 2015

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