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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ALEX TABATABAEE,

12 Plaintiff,

13 vs.

14 K. SANTORO, et al.,

15 Defendants.
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1:14-cv-01545-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED FOR PLAINTIFF'S FAILURE
TO OBEY COURT ORDER
(ECF No. 68.)

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

18 On April 13, 2017, the court issued an order requiring Plaintiff to file an opposition or
19 notice of non-opposition to Defendants' motion for summary judgment, within twenty-one
20 days. (ECF No. 68.) The twenty-one day period has now expired, and Plaintiff has not filed an
21 opposition or non-opposition to the motion for summary judgment or otherwise responded to
22 the court's order.

23 In determining whether to dismiss this action for failure to comply with the directives
24 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in
25 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
26 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
27 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d
28 639, 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 October 2, 2014. 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 defend his case
6 against summary judgment. Thus, both the first and second factors weigh in favor of dismissal.

7 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
8 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
9 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and
10 it is Plaintiff’s failure to file an opposition or notice of non-opposition to Defendants’ motion
11 for summary judgment that is causing delay. Therefore, the third factor weighs in favor of
12 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. Given that Plaintiff is a
16 prisoner proceeding *in forma pauperis*, the court finds monetary sanctions of little use, and
17 given the early stage of these proceedings, the preclusion of evidence or witnesses is not
18 available. However, inasmuch as the dismissal being considered in this case is without
19 prejudice, the court is stopping short of issuing the harshest possible sanction of dismissal with
20 prejudice.

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

23 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed
24 based on Plaintiff’s failure to obey the court’s order of April 13, 2017. These findings and
25 recommendations are submitted to the United States District Judge assigned to the case,
26 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after the
27 date of service of these findings and recommendations, any party may file written objections
28 with the court. Such a document should be captioned “Objections to Magistrate Judge’s

1 Findings and Recommendations.” Any reply to the objections shall be served and filed within
2 ten (10) days after service of the objections. The parties are advised that failure to file
3 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
4 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
5 (9th Cir. 1991)).

6
7 IT IS SO ORDERED.

8 Dated: June 1, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE