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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DEVONTE B. HARRIS,

Plaintiff,

vs.

HUMBERTO GERMAN, et al.,

Defendants.

1:15-cv-01462-DAD-GSA-PC

FINDINGS AND RECOMMENDATIONS  
TO DISMISS CASE FOR FAILURE TO  
OBEY COURT ORDER  
(ECF No. 92.)

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

**I. BACKGROUND**

Devonte B. Harris (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on September 28, 2015. (ECF No. 1.)

On June 5, 2020, the court issued an order requiring the parties to respond whether they believe that a settlement would be beneficial in this case, within thirty days. (ECF No. 92.) On July 1, 2020, Defendants filed a response indicating their belief that a settlement conference may be beneficial. (ECF No. 94.) The thirty-day time period has now expired and Plaintiff has not filed a response. Therefore, Plaintiff has failed to comply with the court’s June 5, 2020 order.

1 **II. DISMISSAL FOR FAILURE TO COMPLY WITH COURT ORDER**

2 In determining whether to dismiss this action for failure to comply with the directives set  
3 forth in its order, “the Court must weigh the following factors: (1) the public’s interest in  
4 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
5 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
6 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639,  
7 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

8 ““The public’s interest in expeditious resolution of litigation always favors dismissal,””  
9 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the  
10 action has been pending since September 25, 2015. Plaintiff’s failure to comply with the court’s  
11 order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the court  
12 cannot continue to expend its scarce resources assisting a litigant who will not respond to the  
13 court’s order. Thus, both the first and second factors weigh in favor of dismissal.

14 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in  
15 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently  
16 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and  
17 it is Plaintiff’s failure to indicate whether he is willing to participate in a settlement conference  
18 that is causing delay. Therefore, the third factor weighs in favor of dismissal.

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

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

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1 **III. CONCLUSION AND RECOMMENDATIONS**

2 Based on the foregoing, the court **HEREBY RECOMMENDS** that this action be  
3 dismissed based on Plaintiff's failure to obey the court's order of June 5, 2020.

4 These findings and recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within fourteen**  
6 **(14) days** from the date of service of these findings and recommendations, Plaintiff may file  
7 written objections with the court. Such a document should be captioned "Objections to  
8 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
9 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
10 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
11 (9th Cir. 1991)).

12 IT IS SO ORDERED.

13 Dated: July 23, 2020

14 /s/ Gary S. Austin  
15 UNITED STATES MAGISTRATE JUDGE