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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ISSAC DA'BOUR DAWSON,

Plaintiff,

vs.

CDCR, et al.,

Defendants.

1:15-cv-01867-DAD-GSA-PC

**FINDINGS AND RECOMMENDATION,
RECOMMENDING THAT THIS CASE
BE DISMISSED FOR PLAINTIFF'S
FAILURE TO OBEY COURT ORDERS
(ECF Nos. 32, 40.)**

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

I. BACKGROUND

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with Plaintiff's initial Complaint filed on December 14, 2015, on Plaintiff's Fourth Amendment claim against defendants Johnson, Guzman, Gonzales, and Sheldon, and First Amendment retaliation claim against defendants Guzman, Gonzales, and Marsh. (ECF No. 1.)

On December 14, 2016, defendants Johnson, Guzman, Gonzales, and Marsh ("Defendants") filed a Rule 12(b)(6) motion to dismiss this case.¹ (ECF No. 27.) On April 13,

¹ Defendant Sheldon has not joined the motion to dismiss.

1 2017, the court ordered Plaintiff to file an opposition or notice of non-opposition to
2 Defendants' motion to dismiss within twenty-one days. (ECF No. 32.) On May 2, 2017,
3 Plaintiff filed a response to the court's order, arguing that the motion to dismiss had previously
4 been denied. (ECF No. 33.) On May 9, 2017, the court advised Plaintiff that this motion to
5 dismiss had not been denied and granted Plaintiff a twenty-one-day extension of time to file an
6 opposition or notice of non-opposition to the motion to dismiss. (ECF No. 34.) On July 20,
7 2017, Plaintiff filed an opposition to the motion to dismiss; however, the opposition was not
8 signed. (ECF No. 39.) On July 24, 2017, the court issued an order striking Plaintiff's
9 opposition for lack of signature and requiring Plaintiff to file a signed opposition within
10 fourteen days. (ECF Nos. 39, 40.) Now, more than twenty-four days have passed, and Plaintiff
11 has not filed a new opposition to Defendants' motion to dismiss.² (Court record.)

12 **II. DISMISSAL FOR FAILURE TO COMPLY WITH COURT ORDERS**

13 In determining whether to dismiss this action for failure to comply with the directives
14 set forth in its orders, "the Court must weigh the following factors: (1) the public's interest in
15 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
16 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
17 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d
18 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

19 "The public's interest in expeditious resolution of litigation always favors dismissal,"
20 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
21 action has been pending since December 14, 2015. Defendants' motion to dismiss was filed on
22 December 14, 2016, more than eight months ago, and Plaintiff has not yet filed an appropriate
23 opposition to the motion. The court cannot continue to expend its scarce resources assisting a

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26 ² On August 7, 2107, Plaintiff filed a "motion to attack Defendants' opposition." (ECF No. 48.)
27 This is not an opposition to the motion to dismiss. Here, Plaintiff responded to the court's order striking his
28 unsigned opposition, asserting that he "placed his signature like he dose [*sic*] with all his motions," and arguing
that "the defendants are using this as a stall tactic to frustrate the Plaintiff into a state where he drops the case."
(Id.) Plaintiff requests the court to "stop to [*sic*] the games that or [*sic*] being played by the defendants, so we can
proceed with the case." (Id.)

1 litigant who will not defend his case. Thus, both the first and second factors weigh in favor of
2 dismissal.

3 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
4 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
5 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and
6 it is Plaintiff’s failure to file an opposition to Defendants’ motion to dismiss that is causing
7 delay. Therefore, the third factor weighs in favor of dismissal.

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

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

18 **III. CONCLUSION AND RECOMMENDATION**

19 Based on the foregoing, the court **HEREBY RECOMMENDS** that this action be
20 dismissed³ without prejudice based on Plaintiff’s failure to obey the court’s orders of April 13,
21 2017, and July 24, 2017.

22 These findings and recommendation are submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within**
24 **fourteen (14) days** after being served with these findings and recommendation, Plaintiff may
25 file written objections with the court. Such a document should be captioned “Objections to
26

27 ³ While the court is aware that defendant Sheldon did not join in the motion to dismiss filed by
28 the remaining defendants, the court recommends dismissal of this case in its entirety, against *all* of the defendants,
based on Plaintiff’s failure to comply with the court’s orders.

1 Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file
2 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
3 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
4 (9th Cir. 1991)).

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6 IT IS SO ORDERED.

7 Dated: August 17, 2017

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

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