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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

RAYMOND D. CHESTER,

 Plaintiff,

 v.

AUDREY KING, et al.,

 Defendants.

1:16-cv-01257-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED FOR PLAINTIFF’S FAILURE TO
COMPLY WITH COURT’S ORDER
(ECF No. 57.)**

**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS**

I. BACKGROUND

Raymond D. Chester (“Plaintiff”) is a civil detainee proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983.

On June 10, 2020, the court issued an order requiring Plaintiff to file an opposition or notice of non-opposition to the motion for summary judgment filed on August 19, 2019 by defendants Audrey King (Executive Director), Jagsir Sandhu, M.D. (Chief Medical Officer), and Robert Withrow, M.D. (Medical Director of Coalinga State Hospital) (collectively, “Defendants”), within thirty days (ECF No. 45.) The thirty day time period has expired and Plaintiff has not filed an opposition or notice of non-opposition to Defendants’ motion for summary judgment. Therefore, Plaintiff failed to comply with the court’s June 10, 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 August 25, 2016. 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 defend his case
13 against summary judgment by defendants King, Sandhu, and Withrow. Thus, both the first and
14 second factors weigh in favor of dismissal.

15 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
16 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
17 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and
18 it is Plaintiff’s failure to file an opposition or notice of non-opposition to Defendants’ motion for
19 summary judgment that is causing delay. Therefore, the third factor weighs in favor of dismissal.

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

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

3 **III. CONCLUSION AND RECOMMENDATIONS**

4 Based on the foregoing, the court **HEREBY RECOMMENDS** that this action be
5 dismissed based on Plaintiff's failure to obey the court's order issued on of May 29, 2020.

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

15 IT IS SO ORDERED.

16 Dated: August 9, 2020

17 /s/ Gary S. Austin
18 UNITED STATES MAGISTRATE JUDGE