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

DOROTHY YORK,  
Plaintiff,  
v.  
TOCHI E. EZENWUGO, et al.,  
Defendants.

1:18-cv-00581-DAD-GSA-PC

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE BE  
DISMISSED FOR PLAINTIFF’S FAILURE TO  
COMPLY WITH COURT ORDER  
(ECF No. 16.)**

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

**I. BACKGROUND**

Dorothy York (“Plaintiff”) is a former 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 the original Complaint filed on April 30, 2018, against defendants Jennifer Adame and Tochi Ezenwugo on Plaintiff’s Eighth Amendment medical claim. (ECF No. 1.)

On August 12, 2019, the court issued an order requiring Plaintiff to show cause why this case should not be dismissed based on Plaintiff’s failure to provide addresses for service upon defendants Adame and Ezenwugo. (ECF No. 16.) Plaintiff was granted thirty days in which to respond to the order to show cause. (Id.) The thirty-day time period has passed and Plaintiff has not provided addresses for service, or otherwise responded to the court’s 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 April 30, 2018. Plaintiff’s failure to comply with the court’s order  
11 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the court cannot  
12 continue to expend its scarce resources assisting a litigant who will not provide defendants’  
13 addresses to enable service of process. Thus, both the first and second factors weigh in favor of  
14 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 provide defendants’ addresses that is causing delay. Therefore, the third  
19 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* who has not paid the filing fee for 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 of August 12, 2019.

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, Plaintiff may file  
9 written objections with the court. Such a document should be captioned "Objections to  
10 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
11 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
12 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
13 (9th Cir. 1991)).

14  
15 IT IS SO ORDERED.

16 Dated: October 8, 2019

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE