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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

QUIRON THOMSON,

Plaintiff,

vs.

V. SOTO, et al.,

Defendants.

1:19-cv-01000-LJO-GSA-PC

**FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE, WITHOUT
PREJUDICE, FOR FAILURE TO OBEY
COURT ORDER
(ECF No. 4.)**

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

I. BACKGROUND

Quiron Thompson (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on July 22, 2019. (ECF No. 1.)

On July 25, 2019, the court issued an order for Plaintiff to submit an application to proceed *in forma pauperis*, or pay the \$400.00 filing fee for this action, within thirty days. (ECF No. 4.) The thirty-day time period has now passed, and Plaintiff has not paid the filing fee, filed an application to proceed *in forma pauperis*, or otherwise responded to the court’s order. Therefore, Plaintiff failed to comply with the court’s July 25, 2019 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
3 set 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
7 639, 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 July 22, 2019. 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 resolve payment of the
13 filing fee for his lawsuit. 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 pay the filing fee or submit a completed application to proceed *in*
18 *forma pauperis* 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 *pro se* who has not paid the filing fee for this action, the court finds
23 monetary sanctions of little use, and given the early stage of these proceedings, the preclusion
24 of evidence or witnesses is not available. However, inasmuch as the dismissal being
25 considered in this case is without prejudice, the court is stopping short of issuing the harshest
26 possible sanction of 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 case be
5 dismissed, without prejudice, based on Plaintiff's failure to obey the court's order of July 25,
6 2019.

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

15
16 IT IS SO ORDERED.

17 Dated: September 27, 2019

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE