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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 EDGAR NELSON PITTS,

12 Plaintiff,

13 vs.

14 ANDRE MATEVOUSIAN, et al.,

15 Defendants.
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1:19-cv-01029-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDERS
(ECF Nos. 3, 8.)

OBJECTIONS, IF ANY, DUE IN TWENTY
(20) DAYS

20 On July 30, 2019 and September 18, 2019, the court issued orders requiring Plaintiff to
21 complete the court's consent/decline form indicating whether he consents to or declines
22 Magistrate Judge jurisdiction, and return the form to the court within thirty days. (ECF Nos. 3,
23 8.) The thirty-day time periods have now expired and Plaintiff has not returned the court's
24 consent/decline form.

25 In determining whether to dismiss this action for failure to comply with the directives set
26 forth in its order, "the Court must weigh the following factors: (1) the public's interest in
27 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
28 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the

1 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639,
2 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

3 ““The public’s interest in expeditious resolution of litigation always favors dismissal,””
4 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
5 action has been pending since July 29, 2019. Plaintiff’s failure to respond to the court’s orders
6 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the court cannot
7 continue to expend its scarce resources assisting a litigant who will not respond to court orders.
8 Thus, both the first and second factors weigh in favor of dismissal.

9 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
10 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
11 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and it
12 is Plaintiff’s failure to submit the court’s consent/decline form that is causing delay. Therefore,
13 the third factor weighs in favor of dismissal.

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

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

23 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed based
24 on Plaintiff’s failure to obey the court’s orders of July 30, 2019 and September 18, 2019. These
25 findings and recommendations are submitted to the United States District Judge assigned to the
26 case, pursuant to the provisions of Title 28 U.S.C. § 36(b)(1). Within **twenty (20) days** after
27 being served with these findings and recommendations, Plaintiff may file written objections with
28 the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and

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

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5 IT IS SO ORDERED.

6 Dated: December 5, 2019

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