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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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10 ABONILICO CARROLL,

11 Plaintiff,

12 v.

13 A. MEDINA,

14 Defendant.

Case No. 1:21-cv-01605-ADA-EPG (PC)

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE BE  
DISMISSED, WITHOUT PREJUDICE,  
BECAUSE OF PLAINTIFF'S FAILURE TO  
COMPLY WITH COURT ORDERS AND TO  
PROSECUTE THIS CASE

(ECF Nos. 36, 40, & 44)

OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN DAYS

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18 Abonilico Carroll ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*  
19 *pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

20 On December 12, 2022, the Court issued an order requiring the parties to submit  
21 scheduling and discovery statements within thirty days. (ECF No. 36). Plaintiff did not file a  
22 scheduling and discovery statement, and his deadline to do so passed. Accordingly, on January  
23 30, 2023, the Court gave Plaintiff an additional twenty-one days to file his statement and  
24 warned Plaintiff that "[f]ailure to comply with this order may result in the dismissal of this  
25 action." (ECF No. 40, p. 2).<sup>1</sup>

26 On February 23, 2023, Plaintiff filed a motion for an extension of time to file his  
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28 <sup>1</sup> After being granted an extension of time (ECF No. 39), Defendant filed his scheduling and discovery  
statement on February 10, 2023 (ECF No. 42).

1 statement. (ECF No. 43). Plaintiff asked for an additional forty-five to sixty days because of  
2 COVID and restricted movement. Plaintiff did “not adequately explain why he has been  
3 unable to file his scheduling and discovery statement, even though he has had over two months  
4 to do so.” (ECF No. 44, pgs. 1-2). “Nevertheless, the Court [] grant[ed] Plaintiff an additional  
5 twenty-one days file his statement.” (Id. at 2). The Court once again warned Plaintiff that  
6 “[f]ailure to comply with this order may result in the dismissal of this action.” (Id.).

7 Plaintiff’s extended deadline has passed, and Plaintiff once again failed to file his  
8 statement. Therefore, the Court will recommend that this case be dismissed, without prejudice,  
9 for failure to comply with Court orders and to prosecute this case.

10 “In determining whether to dismiss a[n] [action] for failure to prosecute or failure to  
11 comply with a court order, the Court must weigh the following factors: (1) the public’s interest  
12 in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
13 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
14 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d  
15 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

16 ““The public’s interest in expeditious resolution of litigation always favors dismissal.””  
17 Id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly,  
18 this factor weighs in favor of dismissal.

19 As to the Court’s need to manage its docket, “[t]he trial judge is in the best position to  
20 determine whether the delay in a particular case interferes with docket management and the  
21 public interest.... It is incumbent upon the Court to manage its docket without being subject to  
22 routine noncompliance of litigants....” Id. Plaintiff’s failure to file a scheduling and discovery  
23 statement is delaying this case and interfering with docket management. Therefore, the second  
24 factor weighs in favor of dismissal.

25 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in  
26 and of itself to warrant dismissal.” Id. (citing Yourish, 191 F.3d at 991). However, “delay  
27 inherently increases the risk that witnesses’ memories will fade and evidence will become  
28 stale,” id. at 643, and it is Plaintiff’s failure to comply with court orders and to prosecute this

1 case that is causing delay and preventing this case from progressing. Therefore, the third factor  
2 weighs in favor of dismissal.

3 As for the availability of lesser sanctions, given that Plaintiff has stopped prosecuting  
4 this case and has failed to comply with court orders, despite being warned of possible  
5 dismissal, there is little available to the Court which would constitute a satisfactory lesser  
6 sanction while protecting the Court from further unnecessary expenditure of its scarce  
7 resources. Considering Plaintiff's incarceration and *in forma pauperis* status, it appears that  
8 monetary sanctions are of little use. And as Plaintiff has stopped prosecuting this case,  
9 excluding evidence would be a meaningless sanction. Additionally, because the dismissal  
10 being considered in this case is without prejudice, the Court is stopping short of using the  
11 harshest possible sanction of dismissal with prejudice.

12 Finally, because public policy favors disposition on the merits, this factor weighs  
13 against dismissal. Id.

14 After weighing the factors, the Court finds that dismissal without prejudice is  
15 appropriate. Accordingly, the Court HEREBY RECOMMENDS that:

- 16 1. This case be dismissed, without prejudice, because of Plaintiff's failure to  
17 comply with court orders and to prosecute this case; and
- 18 2. The Clerk of Court be directed to close this case.

19 These findings and recommendations are submitted to the United States district judge  
20 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
21 (14) days after being served with these findings and recommendations, any party may file  
22 written objections with the court. Such a document should be captioned "Objections to  
23 Magistrate Judge's Findings and Recommendations." Any response to the objections shall be  
24 served and filed within fourteen (14) days after service of the objections.

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1 The parties are advised that failure to file objections within the specified time may  
2 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir.  
3 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).  
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5 IT IS SO ORDERED.

6 Dated: April 5, 2023

7 /s/ Eric P. Grogan  
8 UNITED STATES MAGISTRATE JUDGE  
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