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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARIUS DE'MON LAKE,
Plaintiff,
v.
PATRICK COVELLO, et al.,
Defendants.

No. 2:23-cv-1311 DJC AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On June 11, 2024, defendants filed a motion for judgment on the pleadings. ECF No. 35. After failing to respond, plaintiff was ordered to file an opposition or a statement of non-opposition to the pending motion within twenty-one days. ECF No. 39. In the same order, plaintiff was informed that failure to file an opposition would result in a recommendation that this action be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). Id. The twenty-one-day period has now expired, and plaintiff has not filed a response to the motion for judgment on the pleadings or otherwise responded to the court's order.

In recommending this action be dismissed for failure to prosecute, the court has considered "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives." Ferdik v.

1 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (citation omitted). Because this case cannot
2 move forward without plaintiff's participation, the court finds the factors weigh in favor of
3 dismissal.

4 For the foregoing reasons, IT IS HEREBY RECOMMENDED that this action be
5 dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
8 after being served with these findings and recommendations, any party may file written
9 objections with the court and serve a copy on all parties. Such a document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
11 objections shall be filed and served within fourteen days after service of the objections. The
12 parties are advised that failure to file objections within the specified time may waive the right to
13 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9Dth Cir. 1991).

14 DATED: August 27, 2024

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16 ALLISON CLAIRE
17 UNITED STATES MAGISTRATE JUDGE
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