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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JASON SAUNDERS,

12 Plaintiff,

13 vs.

14 MATTHEW L. CATE, et al.,

15 Defendants.
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1:06-cv-01567-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDER
(Doc. 56.)

OBJECTIONS, IF ANY, DUE IN THIRTY
(30) DAYS

17 On October 8, 2013, the Court issued an order requiring Plaintiff to either file a Fourth
18 Amended Complaint or notify the Court that he is willing to proceed with the claims found
19 cognizable by the Court, within thirty days. (Doc. 56.) Plaintiff has been granted six
20 extensions of time to comply with the Court's order. (Docs. 58, 60, 62, 66, 68, 70.) The
21 deadline has now expired, and Plaintiff has not filed a Fourth Amended Complaint, a Notice, or
22 any other response to the Court's order.

23 In determining whether to dismiss this action for failure to comply with the directives
24 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in
25 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
26 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
27 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d
28 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

1 “The public’s interest in expeditious resolution of litigation always favors dismissal,”
2 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
3 action has been pending since 2006. Plaintiff’s failure to respond to the Court’s order may
4 reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court cannot
5 continue to expend its scarce resources assisting a litigant who will not help himself by
6 defending his lawsuit. Thus, both the first and second factors weigh in favor of dismissal.

7 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
8 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
9 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and it
10 is Plaintiff’s failure to file a Fourth Amended Complaint or Notice that is causing delay.
11 Therefore, the third factor weighs in favor of dismissal.

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

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

21 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed based
22 on Plaintiff’s failure to obey the Court’s order of October 8, 2013. These findings and
23 recommendations are submitted to the United States District Judge assigned to the case,
24 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after being
25 served with these findings and recommendations, Plaintiff may file written objections with the
26 court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
27 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
28 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, ___ F.3d ___, ___, No. 11-

1 17911, 2014 WL 6435497, at *3 (9th Cir. Nov. 18, 2014) (citing Baxter v. Sullivan, 923 F.2d
2 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: December 12, 2014

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