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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 ANTHONY CHAVARRIA,

12 Plaintiff,

13 vs.

14 P. A. GREEN, et al.,

15 Defendants.  
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1:10-cv-02324-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS  
TO DISMISS CASE FOR FAILURE TO  
OBEY COURT ORDER  
(Doc. 26.)

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

19 On September 9, 2014, the Court issued an order requiring Plaintiff to file a response to  
20 Defendants' motion to dismiss of July 28, 2014, within thirty days. (Doc. 26.) The thirty day  
21 period has now expired, and Plaintiff has not filed a response to the motion to dismiss or  
22 otherwise responded 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 December 14, 2010. Plaintiff’s failure to respond to the Court’s  
4 order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court  
5 cannot 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 respond to Defendant’s motion to dismiss 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 early stage  
16 of these proceedings, the preclusion of evidence or witnesses is not available. However,  
17 inasmuch as the dismissal being considered in this case is without prejudice, the Court is  
18 stopping short 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,  
22 without prejudice, based on plaintiff’s failure to obey the court’s order of September 9, 2014.  
23 These findings and recommendations are submitted to the United States District Judge assigned  
24 to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20) days**  
25 after being served with these findings and recommendations, any party may file written  
26 objections with the court. Such a document should be captioned "Objections to Magistrate  
27 Judge's Findings and Recommendations." The parties are advised that failure to file objections

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1 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

5 Dated: October 29, 2014

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