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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 BRADY ARMSTRONG,

12 Plaintiff,

13 vs.

14 A. HEDGPETH, et al.,

15 Defendants.
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1:11-cv-00761-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDER
(Doc. 59.)

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

20 On August 25, 2014, the Court issued an order requiring Plaintiff to complete and
21 submit service documents to the court within thirty days. (Doc. 59.) Plaintiff requested and
22 was granted a thirty-day extension of time to submit the documents. (Docs. 60, 61.) The latest
23 thirty day period has now expired, and Plaintiff has not submitted service documents or
24 otherwise responded to the Court's order.

25 In determining whether to dismiss this action for failure to comply with the directives
26 set 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
2 639, 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 May 11, 2011. Plaintiff’s failure to respond to the Court’s order
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 help himself by
8 defending his lawsuit. 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 documents to initiate service of process for his lawsuit that is
13 causing delay. Therefore, 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. Plaintiff is proceeding in
17 forma pauperis in this action, making monetary sanctions of little use, and given the early stage
18 of these proceedings, the preclusion of evidence or witnesses is not available. However,
19 inasmuch as the dismissal being considered in this case is without prejudice, the Court is
20 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 order of August 25, 2014. These findings and
25 recommendations are submitted to the United States District Judge assigned to the case,
26 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within twenty (20) days** after being
27 served with these findings and recommendations, Plaintiff may file written objections with the
28 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 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
3 Cir. 1991).

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5 IT IS SO ORDERED.

6 Dated: November 10, 2014

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