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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 SAMUEL TRUJILLO,

12 Plaintiff,

13 vs.

14 M. STAINER, et al.,

15 Defendants.  
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1:13-cv-00363-GSA-PC

ORDER DISMISSING CASE FOR  
FAILURE TO OBEY COURT ORDER  
(Doc. 8.)

ORDER FOR CLERK TO CLOSE CASE

18 Samuel Trujillo (“Plaintiff”) is a state prisoner proceeding pro se with this civil rights  
19 action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on  
20 March 13, 2013. (Doc. 1.) On March 29, 2013, Plaintiff consented to Magistrate Judge  
21 jurisdiction under 28 U.S.C. § 636(c) ), and no other parties have made an appearance. (Doc.  
22 5.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of  
23 California, the undersigned shall conduct any and all proceedings in the case until such time as  
24 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

25 On November 19, 2014, the Court issued an order requiring Plaintiff to file an amended  
26 complaint or notify the court of his willingness to proceed on the claims found cognizable by  
27 the court, within thirty days. (Doc. 8.) The thirty day period has now expired, and Plaintiff has  
28 not filed an amended complaint, filed a notice, or otherwise responded to the Court's order.

1 In determining whether to dismiss this action for failure to comply with the directives  
2 set forth in its order, “the Court must weigh the following factors: (1) the public’s interest in  
3 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
4 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
5 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d  
6 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

7 “The public’s interest in expeditious resolution of litigation always favors dismissal,”  
8 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the  
9 action has been pending since March 13, 2013. Plaintiff’s failure to respond to the Court’s  
10 order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court  
11 cannot continue to expend its scarce resources assisting a litigant who will not help himself by  
12 litigating his lawsuit. Thus, both the first and second factors weigh in favor of dismissal.

13 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in  
14 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently  
15 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and it  
16 is Plaintiff’s failure to file an amended complaint or notify the court that he is willing to  
17 proceed that is causing delay. Therefore, the third factor weighs in favor of dismissal.

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

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

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Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

1. This case is DISMISSED without prejudice, based on Plaintiff's failure to obey the Court's order of November 19, 2014; and
2. The Clerk of Court is directed to CLOSE this case.

IT IS SO ORDERED.

Dated: December 30, 2014

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE