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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 ROBERT SIMS,

11 Plaintiff,

12 vs.

13 YVETTE DUNCAN, et al.,

14 Defendants.
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1:13-cv-00536-GSA-PC

ORDER DISMISSING ACTION,
WITHOUT PREJUDICE, FOR
FAILURE TO COMPLY WITH
COURT ORDER
(Doc. 9.)

ORDER FOR CLERK TO CLOSE
CASE

17 **I. BACKGROUND**

18 Robert Sims ("Plaintiff") is a civil detainee proceeding pro se and in forma
19 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
20 commencing this action on April 15, 2013. (Doc. 1.) On May 6, 2013, Plaintiff consented to
21 the jurisdiction of a Magistrate Judge under 28 U.S.C. § 636(c), and no other party has
22 appeared. (Doc. 6.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern
23 District of California, the undersigned shall conduct any and all proceedings in the case until
24 such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

25 On June 12, 2014, the court issued an order requiring Plaintiff to complete and return
26 documents to initiate service of process within thirty days. (Doc. 9.) The thirty day deadline
27 has now expired, and Plaintiff has not returned the service documents or otherwise responded
28 to the 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 April 15, 2013. Plaintiff’s failure to respond to the Court’s order
10 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court cannot
11 continue to expend its scarce resources assisting a litigant who will not help himself by
12 returning documents to the court to initiate service of process in his lawsuit. Thus, both the
13 first and second factors weigh in favor of dismissal.

14 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
15 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
16 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and it
17 is Plaintiff’s failure to respond to the Court’s order that is causing delay. Therefore, the third
18 factor weighs in favor of dismissal.

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

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

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Accordingly, IT IS HEREBY ORDERED that:

1. This action is DISMISSED without prejudice, based on Plaintiff's failure to obey the court's order of June 12, 2014; and
2. The Clerk is directed to close this case.

IT IS SO ORDERED.

Dated: July 31, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE