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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 LYNN DELL ROSS,

11 Plaintiff,

12 vs.

13 B. WOODWARD, et al.,

14 Defendants.
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1:13-cv-01703-GSA-PC

ORDER DISMISSING ACTION,
WITHOUT PREJUDICE, FOR
FAILURE TO COMPLY WITH
COURT ORDER
(Doc. 6.)

ORDER FOR CLERK TO CLOSE
CASE

16 **I. BACKGROUND**

17 Lynn Dell Ross (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis
18 with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
19 commencing this action on October 23, 2013. (Doc. 1.) On October 30, 2013, Plaintiff
20 consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no
21 other parties have made an appearance. (Doc. 4.) Therefore, pursuant to Appendix A(k)(4) of
22 the Local Rules of the Eastern District of California, the undersigned shall conduct any and all
23 proceedings in the case until such time as reassignment to a District Judge is required. Local
24 Rule Appendix A(k)(3).

25 On November 14, 2013, the Court issued an order striking Plaintiff’s unsigned
26 application to proceed in forma pauperis and requiring Plaintiff to file a new, signed application
27 within thirty days. (Doc. 6.) The thirty-day deadline has now expired, and Plaintiff has not
28 filed a new application 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 October 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 the court’s form pursuant to the court’s orders. Thus, both the first and second factors
13 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 has not paid the
22 filing fee for this action and seeks to proceed in forma pauperis, making monetary sanctions of
23 little use, and given the early stage of these proceedings, the preclusion of evidence or
24 witnesses is not available. However, inasmuch as the dismissal being considered in this case is
25 without prejudice, the Court is stopping short of issuing the harshest possible sanction of
26 dismissal with prejudice.

27 Finally, because public policy favors disposition on the merits, this factor will always
28 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 November 14, 2013; and
- 2. The Clerk is directed to close this case.

IT IS SO ORDERED.

Dated: December 30, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE