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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MARK S. SOKOLSKY,

12 Plaintiff,

13 vs.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.
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1:13-cv-02044-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDER
(ECF No. 90.)

OBJECTIONS, IF ANY, DUE IN
FOURTEEN (14) DAYS

17 Mark S. Sokolsky (“Plaintiff”) is a civil detainee proceeding *pro se* and *in forma*
18 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

19 On October 31, 2017, the court issued an order requiring Plaintiff to file an opposition
20 or statement of non-opposition to Defendants’ motion for summary judgment within thirty (30)
21 days. (ECF No. 90.) The thirty-day period has now expired, and Plaintiff has not filed an
22 opposition or statement of non-opposition, or 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 16, 2013. 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 defend against
6 summary judgment. 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
10 it is Plaintiff’s continued failure to file a response to Defendants’ motion for summary
11 judgment that is causing delay.¹ 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. Given that Plaintiff is a
15 civil detainee who is proceeding *in forma pauperis* in this action, the court finds monetary
16 sanctions of little use, and given the early stage of these proceedings, the preclusion of
17 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in
18 this case is without prejudice, the court is stopping short of issuing the harshest possible
19 sanction of dismissal with prejudice.

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

22 Accordingly, the court **HEREBY RECOMMENDS** that this action be dismissed based
23 on Plaintiff’s failure to obey the court’s order of August 17, 2017. These findings and
24 recommendations are submitted to the United States District Judge assigned to the case,
25 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after the
26 date of service of these findings and recommendations, Plaintiff may file written objections
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28 ¹ Defendants’ motion for summary judgment was filed on March 30, 2017. (ECF No. 68.) More than nine months have passed, and Plaintiff has not filed a response to the motion.

1 with the court. Such a document should be captioned “Objections to Magistrate Judge’s
2 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
3 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d
4 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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6 IT IS SO ORDERED.

7 Dated: January 8, 2018

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE