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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JOEL BROWN,

12 Plaintiff,

13 vs.

14 GOVERNOR EDMUND G. BROWN,  
15 JR., et al.,

16 Defendants.  
17  
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1:14-cv-00648-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS  
TO DISMISS CASE, WITHOUT  
PREJUDICE, FOR PLAINTIFF'S  
FAILURE TO COMPLY WITH COURT  
ORDERS  
(Docs. 3, 11.)

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

19 On May 8, 2014, the Court issued an order requiring Plaintiff to either submit an  
20 application to proceed in forma pauperis or pay the \$400.00 filing fee for this action, within  
21 forty-five days. (Doc. 11.) On June 26, 2014, Plaintiff filed a motion for extension of time to  
22 comply with the order. (Doc. 9.) On July 9, 2014, the Court denied the motion for extension of  
23 time and issued an order for Plaintiff to show cause, within thirty days, why this case should  
24 not be dismissed for his failure to comply with the May 8, 2014 order. (Doc. 11.) The thirty-  
25 day deadline has passed, and Plaintiff has not responded to the order to show cause.

26 In determining whether to dismiss this action for failure to comply with the directives  
27 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in  
28 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of

1 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
2 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d  
3 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

4 “The public’s interest in expeditious resolution of litigation always favors dismissal,”  
5 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the  
6 action has been pending since May 1, 2014. Plaintiff’s failure to respond to the Court’s orders  
7 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court cannot  
8 continue to expend its scarce resources assisting a litigant who will not help himself by  
9 resolving payment of the filing fee for his lawsuit or defending his lawsuit against dismissal.  
10 Thus, both the first and second factors weigh in favor of dismissal.

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

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

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

26 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed  
27 without prejudice, based on Plaintiff’s failure to obey the Court’s orders of May 8, 2014 and  
28 July 9, 2014.

