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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 BRUCE MILLER,

12 Plaintiff,

13 vs.

14 JAMES WALTERS,

15 Defendant.
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1:14-cv-00898-GSA-PC

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

ORDER FOR CLERK TO CLOSE
CASE

18 **I. BACKGROUND**

19 Bruce Miller ("Plaintiff") is a civil detainee proceeding pro se and in forma pauperis
20 with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
21 commencing this action on June 12, 2014. (Doc. 1.) On July 7, 2014, Plaintiff consented to
22 Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no other parties
23 have made an appearance. (Doc. 5.) Therefore, pursuant to Appendix A(k)(4) of the Local
24 Rules of the Eastern District of California, the undersigned shall conduct any and all
25 proceedings in the case until such time as reassignment to a District Judge is required. Local
26 Rule Appendix A(k)(3).

27 On September 3, 2014, the court issued an order dismissing the Complaint for failure to
28 state a claim, with leave to file an amended complaint within thirty days. (Doc. 6.) The thirty-

1 day time period has expired, and Plaintiff has not filed an amended complaint or otherwise
2 responded to the court's order.

3 In determining whether to dismiss this action for failure to comply with the directives
4 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in
5 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
6 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
7 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d
8 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

9 "The public's interest in expeditious resolution of litigation always favors dismissal,"
10 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
11 action has been pending since June 12, 2014. Plaintiff's failure to respond to the Court's order
12 may reflect Plaintiff's disinterest in prosecuting this case. In such an instance, the Court cannot
13 continue to expend its scarce resources assisting a litigant who will not help himself by
14 returning the court's form pursuant to the court's orders. Thus, both the first and second factors
15 weigh in favor of dismissal.

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

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

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

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. This action is DISMISSED without prejudice, based on Plaintiff's failure to obey
5 the court's order of September 3, 2014; and

6 2. The Clerk is directed to close this case.

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8 IT IS SO ORDERED.

9 Dated: October 31, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE