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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DERWIN BUTLER,

12 Plaintiff,

13 vs.

14 M. OLIVEIRA, et al.,

15 Defendants.  
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1:15-cv-00041-GSA-PC

ORDER DISMISSING CASE, WITHOUT  
PREJUDICE, FOR PLAINTIFF'S  
FAILURE TO COMPLY WITH COURT  
ORDER  
(Doc. 7.)

ORDER FOR CLERK TO CLOSE CASE

17 **I. BACKGROUND**

18 Derwin Butler ("Plaintiff") is a state prisoner proceeding pro se with this civil rights  
19 case pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on  
20 November 5, 2014, at the U. S. District Court for the Northern District of California. (Doc. 1.)  
21 On January 2, 2015, the case was transferred to the Eastern District of California. (Doc. 4.) On  
22 March 13, 2015, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant to  
23 28 U.S.C. § 636(c), and no other parties have made an appearance. (Doc. 3.) Therefore,  
24 pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the  
25 undersigned shall conduct any and all proceedings in the case until such time as reassignment  
26 to a District Judge is required. Local Rule Appendix A(k)(3). (Doc. 9.)

27 On March 17, 2015, the Court issued an order requiring Plaintiff to show cause, within  
28 thirty days, why this case should not be dismissed for Plaintiff's failure to comply with the

1 Court's order of January 9, 2015, which required him to submit an application to proceed in  
2 forma pauperis or pay the filing fee for this action. (Doc. 10.) On March 23, 2015 and April 3,  
3 2015, Plaintiff filed notices to the Court, but neither of the notices was responsive to the  
4 Court's orders or showed cause why the case should not be dismissed. (Docs. 11, 12.) To date,  
5 Plaintiff still has not paid the filing fee or submitted an application in response to the Court's  
6 January 9, 2015 order.

## 7 **II. DISMISSAL FOR FAILURE TO COMPLY**

8 In determining whether to dismiss this action for failure to comply with the directives  
9 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in  
10 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of  
11 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
12 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d  
13 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

14 "The public's interest in expeditious resolution of litigation always favors dismissal,"  
15 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the  
16 action has been pending since November 5, 2014. Plaintiff's failure to respond to the Court's  
17 order may reflect Plaintiff's disinterest in prosecuting this case. In such an instance, the Court  
18 cannot continue to expend its scarce resources assisting a litigant who will not help himself by  
19 resolving payment of the filing fee for his lawsuit. Thus, both the first and second factors  
20 weigh in favor of dismissal.

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

26 As for the availability of lesser sanctions, at this stage in the proceedings there is little  
27 available to the Court which would constitute a satisfactory lesser sanction while protecting the  
28 Court from further unnecessary expenditure of its scarce resources. Plaintiff is a prisoner who

1 may be indigent, making monetary sanctions of little use, and given the early stage of these  
2 proceedings, the preclusion of evidence or witnesses is not available. However, inasmuch as  
3 the dismissal being considered in this case is without prejudice, the Court is stopping short of  
4 issuing the harshest possible sanction of dismissal with prejudice.

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

7 **III. CONCLUSION**

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. This action is DISMISSED without prejudice, based on Plaintiff's failure to obey  
10 the Court's order of January 9, 2015; and  
11 2. The Clerk is directed to CLOSE this case.

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13 IT IS SO ORDERED.

14 Dated: April 30, 2015

/s/ Gary S. Austin  
15 UNITED STATES MAGISTRATE JUDGE  
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