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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA

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9 PAUL A. MARTINEZ,  
10 Plaintiff,

11 v.

12 CALAVERAS COUNTY SHERIFF'S  
13 JAIL, et al.,  
14 Defendants.

1:15-cv-00887-EPG (PC)

ORDER FOR PLAINTIFF TO SHOW  
CAUSE WHY CASE SHOULD NOT BE  
DISMISSED FOR FAILURE TO STATE A  
CLAIM AND FAILURE TO COMPLY  
WITH A COURT ORDER  
(ECF NO. 12)

THIRTY DAY DEADLINE

15 Paul Martinez ("Plaintiff") is proceeding *pro se* and *in forma pauperis* in this civil  
16 rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this  
17 action on June 11, 2015. (ECF No. 1). On October 3, 2016, the Court directed Plaintiff to file  
18 an amended complaint within 30 days from the date of service of the order. (ECF No. 12). The  
19 Court also notified Plaintiff that failure to file an amended complaint in compliance with the  
20 order would result in dismissal of the case for failure to state a claim and failure to comply with  
21 a court order. (Id. at p. 8). The time period has expired, and Plaintiff has not filed an amended  
22 complaint. Therefore, Plaintiff will be ordered to show cause why the case should not be  
23 dismissed for failure to state a claim and for failure to comply with a court order.

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

3 “The public’s interest in expeditious resolution of litigation always favors dismissal,”  
4 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)). While it has  
5 only been approximately forty-five days since Plaintiff was ordered to file an amended  
6 complaint, the case has been pending since June of 2015, and there is no operative complaint in  
7 this case.

8 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in  
9 and of itself to warrant dismissal.” Pagtalunan, 291 F.3d at 642 (citing Yourish at 991).  
10 However, “delay inherently increases the risk that witnesses’ memories will fade and evidence  
11 will become stale,” id., and it is Plaintiff’s failure to filed an amended complaint that is causing  
12 delay. The case is now over a year old and there is no operative complaint. The case is now  
13 stalled until Plaintiff files an amended complaint. Therefore, the third factor weighs in favor of  
14 dismissal.

15 As for the availability of lesser sanctions, at this stage in the proceedings there is little  
16 available to the Court which would constitute a satisfactory lesser sanction while protecting the  
17 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions are of  
18 little use, considering Plaintiff’s incarceration and *in forma pauperis* status, and given the stage  
19 of these proceedings, the preclusion of evidence or witnesses is not available. While dismissal  
20 is a harsh sanction, Plaintiff’s complaint has already been dismissed (with leave to amend) for  
21 failure to state a claim and there is no operative complaint.

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

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