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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 LAMAR SINGLETON, SR.,

12 Plaintiff,

13 vs.

14 DR. FORTUNE, et al.,

15 Defendants.  
16  
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1:17-cv-00124-DAD-GSA-PC

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE BE  
DISMISSED, WITHOUT PREJUDICE, FOR  
FAILURE TO OBEY COURT ORDER  
(ECF No. 66.)

OBJECTIONS, IF ANY, DUE IN  
FOURTEEN DAYS

18 Lamar Singleton, Sr., (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*  
19 *pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This case now proceeds  
20 with the First Amended Complaint filed on February 19, 2016, against defendant Fortune  
21 (“Defendant”) on Plaintiff’s medical claim pursuant to the Eighth Amendment. (ECF No. 25.)

22 On March 26, 2018, the court issued an order requiring Plaintiff to file an opposition or  
23 statement of non-opposition to defendant Fortune’s motion to compel filed on September 29,  
24 2017, within thirty days. (ECF No. 66.) The thirty-day time period has now expired and  
25 Plaintiff has not filed an opposition or non-opposition, or otherwise responded to the court’s  
26 order.

27 In determining whether to dismiss this action for failure to comply with the directives  
28 set forth in its order, “the Court must weigh the following factors: (1) the public’s interest in

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

5 “The public’s interest in expeditious resolution of litigation always favors dismissal,”  
6 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the  
7 action has been pending since April 10, 2015. Plaintiff’s failure to respond to the court’s order  
8 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the court cannot  
9 continue to expend its scarce resources assisting a litigant who will not participate in discovery.  
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  
14 it is Plaintiff’s failure to respond to Defendant’s motion to compel that is causing delay.  
15 Therefore, the third 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. Given that Plaintiff is a  
19 prisoner proceeding *in forma pauperis*, the court finds monetary sanctions of little use.  
20 However, inasmuch as the dismissal being considered in this case is without prejudice, the  
21 court is stopping short of issuing the harshest possible sanction of dismissal with prejudice.

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

24 Accordingly, the court **HEREBY RECOMMENDS** that this action be dismissed based  
25 on Plaintiff’s failure to obey the court’s order of March 26, 2018. These findings and  
26 recommendations are submitted to the United States District Judge assigned to the case,  
27 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being  
28 served with these findings and recommendations, Plaintiff may file written objections with the

1 court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
2 Recommendations.” Plaintiff is advised that failure to file objections within the specified time  
3 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th  
4 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: May 22, 2018

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE