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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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10 CARLTON R. CALLINS,
11 Plaintiff,
12 v.
13 C. PFEIFFER, et al.,
14 Defendants.

Case No. 1:17-cv-00840-DAD-EPG (PC)
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITHOUT PREJUDICE,
BECAUSE OF PLAINTIFF’S FAILURE
TO COMPLY WITH A COURT ORDER
AND FAILURE TO PROSECUTE
(ECF NO. 23)
OBJECTIONS, IF ANY, DUE WITHIN
TWENTY-ONE DAYS

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18 Carlton Callins (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis*
19 in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the complaint
20 commencing this action on June 23, 2017. (ECF No. 1). On June 21, 2018, the Court found
21 service of the complaint appropriate and directed Plaintiff to complete and return the service
22 documents within thirty days. (ECF No. 20).

23 On July 20, 2018, Plaintiff filed a motion for an order directing a law librarian at his
24 institution of confinement to allow him to make copies of his complaint so that he could serve
25 Defendants. (ECF No. 22). On July 30, 2018, the Court denied Plaintiff’s motion, ordering
26 that “Plaintiff has thirty days from the date of service of this order to complete and return the
27 service documents (which are identified in the order dated June 20, 2018 (ECF No. 20)) or to
28 file another motion for copies in compliance with the instructions [in this order].” (ECF No.

1 23, p. 2).

2 The deadline for Plaintiff to complete and return the service documents or file a motion
3 for copies with more information has passed, and Plaintiff failed to do either. Accordingly, the
4 Court will recommend that Plaintiff's case be dismissed, without prejudice, for failure to
5 comply with a court order and failure to prosecute. However, the Court will vacate these
6 findings and recommendations if, within the objection period, Plaintiff completes and returns
7 the service documents or files a motion for copies in compliance with the instructions in the
8 Court's order entered on July 30, 2018 (ECF No. 23).

9 "In determining whether to dismiss a[n] [action] for failure to prosecute or failure to
10 comply with a court order, the Court must weigh the following factors: (1) the public's interest
11 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
12 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
13 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d
14 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

15 "The public's interest in expeditious resolution of litigation always favors dismissal."
16 Id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)). Accordingly,
17 this factor weighs in favor of dismissal.

18 As to the Court's need to manage its docket, "[t]he trial judge is in the best position to
19 determine whether the delay in a particular case interferes with docket management and the
20 public interest.... It is incumbent upon the Court to manage its docket without being subject to
21 routine noncompliance of litigants...." Pagtalunan, 291 at 639. As described above, the Court
22 directed Plaintiff to complete and return the service documents. As Plaintiff was apparently
23 having trouble getting the necessary copies of his complaint, he filed a motion for the Court to
24 order a law librarian at his institution of confinement to allow him to make copies. Because
25 Plaintiff's motion included almost no information, Plaintiff's motion was denied and Plaintiff
26 was directed to complete and return the service documents or file a motion for copies with
27 more information. (ECF No. 23). Plaintiff failed to do either. This non-compliance is
28 delaying this case and interfering with docket management. Therefore, the second factor

1 weighs in favor of dismissal.

2 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
3 and of itself to warrant dismissal.” Id. at 642 (citing Yourish, 191 F.3d at 991). However,
4 “delay inherently increases the risk that witnesses’ memories will fade and evidence will
5 become stale,” id. at 643, and as described above, it is Plaintiff’s failure to comply with a court
6 order and to prosecute this case that is causing delay. Therefore, the third factor weighs in
7 favor of dismissal.

8 As for the availability of lesser sanctions, at this stage in the proceedings there is little
9 available to the Court which would constitute a satisfactory lesser sanction while protecting the
10 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions are of
11 little use, considering Plaintiff’s incarceration and *in forma pauperis* status, and given the stage
12 of these proceedings, the preclusion of evidence or witnesses is not available. Additionally,
13 because the dismissal being considered in this case is without prejudice, the Court is stopping
14 short of using the harshest possible sanction of dismissal with prejudice.

15 Finally, because public policy favors disposition on the merits, this factor weighs
16 against dismissal. Id.

17 After weighing the factors, the Court finds that dismissal without prejudice is
18 appropriate. Accordingly, the Court HEREBY RECOMMENDS that:

- 19 1. This action be dismissed without prejudice, based on Plaintiff’s failure to
20 prosecute this case and failure to comply with the Court’s order entered on July
21 30, 2018 (ECF No. 23); and
- 22 2. The Clerk of Court be directed to close this case.

23 These findings and recommendations will be submitted to the United States district
24 judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
25 twenty-one (21) days after being served with these findings and recommendations, Plaintiff
26 may file written objections with the Court. The document should be captioned “Objections to
27 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
28 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.

1 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
2 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: October 5, 2018

6 /s/ Eric P. Gray
7 UNITED STATES MAGISTRATE JUDGE
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