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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MICHAEL B. WILLIAMS,

12 Plaintiff,

13 vs.

14 BRENNNA REGO, et al.,

15 Defendants.
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1:17-cv-01273-LJO-GSA-PC

**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED, WITHOUT PREJUDICE, FOR
FAILURE TO COMPLY WITH COURT
ORDER
(ECF No. 11.)**

**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS**

18 **I. BACKGROUND**

19 Michael B. Williams (“Plaintiff”) is a civil detainee proceeding *pro se* and *in forma*
20 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint
21 commencing this action on September 25, 2017. (ECF No. 1.) The court screened the Complaint
22 under 28 U.S.C. § 1915A and issued an order on July 18, 2018, dismissing the Complaint for
23 failure to state a claim, with leave to file an amended complaint within thirty days. (ECF No. 9.)

24 To date, Plaintiff has not filed an amended complaint. However, on July 30, 2018,
25 Plaintiff filed a request to voluntarily dismiss this case, without prejudice and without giving up
26 his appeal rights. (ECF No. 10.) On August 1, 2018, the court issued an order discussing the
27 effects of a voluntary dismissal without prejudice and a voluntary dismissal with prejudice. (ECF
28 No. 11.) Plaintiff was informed that if he dismisses this case without prejudice he will lose his

1 right to appeal the dismissal. (Id.) The court’s order required Plaintiff to notify the court, within
2 thirty days, of his intentions regarding voluntary dismissal. (ECF No. 11.) The thirty-day
3 deadline for Plaintiff to notify the court has expired and Plaintiff has not filed any response to
4 the court’s August 1, 2018 order.

5 **II. DISMISSAL FOR FAILURE TO COMPLY WITH COURT ORDER**

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

12 “The public’s interest in expeditious resolution of litigation always favors dismissal,”
13 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
14 action has been pending since September 25, 2017. Plaintiff’s failure to comply with the court’s
15 order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the court
16 cannot continue to expend its scarce resources assisting a litigant who will not inform the court
17 of his intentions in litigating his case. Thus, both the first and second factors weigh in favor of
18 dismissal.

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

24 As for the availability of lesser sanctions, at this stage in the proceedings there is little
25 available to the court which would constitute a satisfactory lesser sanction while protecting the
26 court from further unnecessary expenditure of its scarce resources. Given that Plaintiff is a
27 prisoner proceeding *pro se* who is proceeding *in forma pauperis* with this action, the court finds
28 monetary sanctions of little use, and given the early stage of these proceedings, the preclusion of

1 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in
2 this case is without prejudice, the court is stopping short of issuing the harshest possible sanction
3 of dismissal with prejudice.

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

6 **III. CONCLUSION AND RECOMMENDATIONS**

7 Based on the foregoing, the court **HEREBY RECOMMENDS** that this action be
8 dismissed based on Plaintiff's failure to obey the court's order of August 1, 2018.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within fourteen**
11 **(14) days** from the date of service of these findings and recommendations, Plaintiff may file
12 written objections with the court. Such a document should be captioned "Objections to
13 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
14 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
15 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
16 (9th Cir. 1991)).

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18 IT IS SO ORDERED.

19 Dated: September 17, 2018

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE