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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
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10 EMANUEL L. BOONE,  
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12 Plaintiff,

13 vs.

14 GARCIA, et al.,

15 Defendants.  
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**1:23-cv-00173-GSA-PC**

**ORDER FOR CLERK TO RANDOMLY  
ASSIGN A UNITED STATES DISTRICT  
JUDGE TO THIS CASE**

**AND**

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE  
BE DISMISSED FOR PLAINTIFF'S  
FAILURE TO OBEY COURT ORDER  
(ECF No. 4.)**

**OBJECTIONS, IF ANY, DUE ON OR  
BEFORE APRIL 25, 2023**

21 On February 6, 2023, the Court sent Plaintiff an order requiring Plaintiff to complete and  
22 submit the Court's consent/decline form (to consent to or decline magistrate judge jurisdiction in  
23 this case), within thirty days. (ECF No. 4.) The thirty-day time period has now expired and  
24 Plaintiff has not submitted a consent/decline form to the Court or otherwise responded to the  
25 Court's order.

26 In determining whether to dismiss this action for failure to comply with the directives set  
27 forth in its order, "the Court must weigh the following factors: (1) the public's interest in  
28 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of

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

4 “The public’s interest in expeditious resolution of litigation always favors dismissal,” *id.*  
5 (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the action  
6 has been pending since February 6, 2023. Plaintiff's failure to respond to the Court’s order may  
7 reflect Plaintiff's disinterest in prosecuting this case. In such an instance, the Court cannot  
8 continue to expend its scarce resources assisting a litigant who will not help himself by litigating  
9 his lawsuit and complying with Court orders. Thus, both the first and second factors weigh in  
10 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 it  
14 is Plaintiff’s failure to file the Second Amended Complaint that is causing delay. Therefore, the  
15 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. Plaintiff is proceeding *pro*  
19 *se* and *in forma pauperis* in this action, making monetary sanctions of little use, and given the  
20 early stage of these proceedings, the preclusion of evidence or witnesses is not available.  
21 However, inasmuch as the dismissal being considered in this case is without prejudice, the Court  
22 is stopping short of issuing the harshest possible sanction of dismissal with prejudice.

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

25 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed based  
26 on plaintiff’s failure to comply with the court’s order issued on February 6, 2023. These findings  
27 and recommendations are submitted to the United States District Judge assigned to the case,  
28 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **On or before April 25, 2023**, Plaintiff

1 may file objections to the findings and recommendations, Plaintiff may file written objections  
2 with the court. Such a document should be captioned “Objections to Magistrate Judge's Findings  
3 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
4 time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39,  
5 No. 11-17911, 2014 WL 6435497, at \*3 (9th Cir. Nov. 18, 2014) (citing Baxter v. Sullivan, 923  
6 F.2d 1391, 1394 (9th Cir. 1991)).

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8 IT IS SO ORDERED.

9 Dated: March 31, 2023

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE