

"The public's interest in expeditious resolution of litigation always favors dismissal," <u>id</u>.
(quoting <u>Yourish v. California Amplifier</u>, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the action has
been pending for more than three years. Plaintiff's failure to respond to the Court's order may reflect
Plaintiff's disinterest in prosecuting this case. In such an instance, the Court cannot continue to expend
its scarce resources assisting a litigant who will not help himself by amending his complaint to state a
cognizable claim. Thus, both the first and second factors weigh in favor of dismissal.

Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in and of
itself to warrant dismissal." <u>Id.</u> (citing <u>Yourish</u> at 991). However, "delay inherently increases the risk
that witnesses' memories will fade and evidence will become stale," <u>id.</u>, and it is Plaintiff's failure to set
forth clear claims in the first instance and to respond to the Court's order in the second instance that is
causing delay. Therefore, the third factor weighs in favor of dismissal.

As for the availability of lesser sanctions, at this stage in the proceedings there is little available to the Court which would constitute a satisfactory lesser sanction while protecting the Court from further unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this action, making monetary sanctions of little use, and given the early stage of these proceedings, the preclusion of evidence or witnesses is not available. However, inasmuch as the dismissal being considered in this case is without prejudice, the Court is stopping short of issuing the harshest possible sanction of dismissal with prejudice.

Finally, because public policy favors disposition on the merits, this factor will always weigh
against dismissal. <u>Id.</u> at 643.

Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed based on
Plaintiff's failure to obey the Court's order of March 17, 2011.

These findings and recommendations are submitted to the United States District Judge assigned
to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being
served with these findings and recommendations, Plaintiff may file written objections with the court.
Such a document should be captioned "Objections to Magistrate Judge's Findings and
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1	Recommendations." Plaintiff is advised that failure to file objections within the specified time may
2	waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).
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4	IT IS SO ORDERED.
5	Dated:August 12, 2011/s/ Gary S. AustinUNITED STATES MAGISTRATE JUDGE
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