



1 disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing  
2 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

3 “The public’s interest in expeditious resolution of litigation always favors dismissal,” id.  
4 (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the action has  
5 been pending since February 25, 2010. Plaintiff’s failure to respond to the Court’s order may reflect  
6 Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court cannot continue to expend  
7 its scarce resources assisting a litigant who will not help himself by defending his lawsuit against  
8 summary judgment. Thus, both the first and second factors weigh in favor of dismissal.

9 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in and of  
10 itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently increases the risk  
11 that witnesses’ memories will fade and evidence will become stale,” id., and it is Plaintiff’s failure to  
12 respond to Defendant’s motion for summary judgment which is causing delay. Therefore, the third factor  
13 weighs in favor of dismissal.

14 As for the availability of lesser sanctions, at this stage in the proceedings there is little available  
15 to the Court which would constitute a satisfactory lesser sanction while protecting the Court from further  
16 unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this action,  
17 making monetary sanctions of little use, and given the stage of these proceedings, the preclusion of  
18 evidence or witnesses is not available. The dismissal being considered in this case is with prejudice,  
19 which is the harshest possible sanction. However, the Court finds this sanction appropriate in light of  
20 the fact that three months have passed since Defendants filed the motion for summary judgment, and  
21 Plaintiff has yet to file an opposition.

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

24 Accordingly, the Court HEREBY RECOMMENDS that this action be dismissed with prejudice,  
25 based on Plaintiff’s failure to obey the Court’s order of August 30, 2012 and failure to prosecute this  
26 action.

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1           These findings and recommendations are submitted to the United States District Judge assigned  
2 to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being  
3 served with these findings and recommendations, any party may file written objections with the Court.  
4 Such a document should be captioned "Objections to Magistrate Judge's Findings and  
5 Recommendations." The parties are advised that failure to file objections within the specified time may  
6 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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IT IS SO ORDERED.

**Dated: October 11, 2012**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE