



1 been pending for more than three years. Plaintiff's failure to respond to the Court's order may reflect  
2 Plaintiff's disinterest in prosecuting this case. In such an instance, the Court cannot continue to expend  
3 its scarce resources assisting a litigant who will not help himself by either amending the complaint or  
4 notifying the court of his willingness to proceed on the claims found cognizable by the Court. Thus,  
5 both the first and second factors weigh in favor of dismissal.

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

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

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

20 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based on  
21 plaintiff's failure to obey the court's order of March 16, 2011.

22 These findings and recommendations are submitted to the United States District Judge assigned  
23 to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being  
24 served with these findings and recommendations, plaintiff may file written objections with the court.  
25 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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IT IS SO ORDERED.

**Dated: May 6, 2011**

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