

1 been pending for nearly three months. Plaintiff's failure to respond to the Court's order may reflect
2 Plaintiff's disinterest in prosecuting his 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 submitting an application or
4 paying the filing fee so his own case can proceed. Thus, both the first and second factors weigh in favor
5 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 Ramirez' failure to
9 resolve payment of the filing fee at the commencement of this action in the first instance and to respond
10 to the Court's order in the second instance that is causing delay. Therefore, the third factor weighs in
11 favor of dismissal.

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

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

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. This action is dismissed without prejudice, based on plaintiff's failure to obey the court's
23 order of October 10, 2008; and
- 24 2. The Clerk is directed to close the case.

25 IT IS SO ORDERED.

26 **Dated: January 4, 2009**

27 **/s/ Sandra M. Snyder**
UNITED STATES MAGISTRATE JUDGE