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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRUCE KOKLICH,)	1:09-cv-01459-SMS-PC
)	
Plaintiff,)	ORDER DISMISSING CASE FOR FAILURE
)	TO OBEY A COURT ORDER
vs.)	(Doc. 8.)
)	
P. MENDOZA,)	ORDER FOR CLERK TO CLOSE CASE
)	
Defendant.)	
_____)	

Plaintiff, Bruce Koklich ("Plaintiff") is a state prisoner proceeding with this action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on July 17, 2009 at the Sacramento Division of the United States District Court for the Eastern District of California. (Doc. 1.) On August 19, 2009, the case was transferred to the Fresno Division of the Eastern District of California. (Doc. 3.) On September 30, 2009, Plaintiff consented to Magistrate Judge jurisdiction, and no other party has appeared in this action. Local Rule Appendix A(k)(3). (Doc. 9.)

On September 11, 2009, the court issued an order requiring Plaintiff to either submit an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, or pay the \$350.00 filing fee for this action, within forty-five days. (Doc. 8.) More than sixty days have now passed, and Plaintiff has not paid the filing fee or submitted an application.

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1 In determining whether to dismiss this action for failure to comply with the directives set forth
2 in its order, “the Court must weigh the following factors: (1) the public’s interest in expeditious
3 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to
4 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring
5 disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing
6 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

7 “The public’s interest in expeditious resolution of litigation always favors dismissal,” id.
8 (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the action has
9 been pending for more than four months. Plaintiff’s failure to respond to the Court’s order may reflect
10 Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court cannot continue to expend
11 its scarce resources assisting a litigant who will not help himself by either submitting an application to
12 proceed in forma pauperis or paying the filing fee for this action. Thus, both the first and second factors
13 weigh in favor of dismissal.

14 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in and of
15 itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently increases the risk
16 that witnesses’ memories will fade and evidence will become stale,” id., and it is Plaintiff’s failure to pay
17 the filing fee or submit an application in the first instance and to respond to the Court’s order in the
18 second instance that is causing delay. Therefore, the third factor weighs in favor of dismissal.

19 As for the availability of lesser sanctions, at this stage in the proceedings there is little available
20 to the Court which would constitute a satisfactory lesser sanction while protecting the Court from further
21 unnecessary expenditure of its scarce resources. Plaintiff failed to pay the filing fee upon
22 commencement of this action, and Plaintiff failed again to pay the filing fee in response to the Court’s
23 order, making monetary sanctions of little use, and given the early stage of these proceedings, the
24 preclusion of evidence or witnesses is not available. However, inasmuch as the dismissal being
25 considered in this case is without prejudice, the Court is stopping short of issuing the harshest possible
26 sanction of dismissal with prejudice.

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

Accordingly, IT IS HEREBY ORDERED that:

1. This action is dismissed, without prejudice, based on Plaintiff's failure to obey the court's order of September 11, 2009; and
2. The Clerk is directed to close this case.

IT IS SO ORDERED.

Dated: November 25, 2009

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE