

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE A. SANCHEZ,
Plaintiff,
vs.
SIX UNKNOWN NAMES AGENTS, et al.,
Defendants.

1:13-cv-00238-LJO-GSA-PC

**FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY A COURT ORDER
(Doc. 3.)**

OBJECTIONS, IF ANY, DUE IN TWENTY
DAYS

Jose A. Sanchez (“Plaintiff”) is a federal prisoner proceeding pro se with this civil rights action pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388 (1971). Plaintiff filed the Complaint commencing this action on February 15, 2013. (Doc. 1.)

On February 21, 2013, 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 (45) days. The forty-five (45) day period has now expired, and Plaintiff has not paid the filing fee, submitted an application, or otherwise responded to the Court's order.

In determining whether to dismiss this action for failure to comply with the directives set forth in its order, "the Court must weigh the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of

1 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
2 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d
3 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

4 “The public’s interest in expeditious resolution of litigation always favors dismissal,”
5 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
6 action has been pending since February 15, 2013. Plaintiff’s failure to respond to the Court’s
7 order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court
8 cannot continue to expend its scarce resources assisting a litigant who will not help himself by
9 either submitting an application or paying the filing fee for his lawsuit. Thus, both the first and
10 second factors weigh in favor of dismissal.

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

17 As for the availability of lesser sanctions, at this stage in the proceedings there is little
18 available to the Court which would constitute a satisfactory lesser sanction while protecting the
19 Court from further unnecessary expenditure of its scarce resources. Plaintiff failed to pay the
20 filing fee for this action, making it unlikely that monetary sanctions will be effective, and given
21 the early stage of these proceedings, the preclusion of evidence or witnesses is not available.
22 However, inasmuch as the dismissal being considered in this case is without prejudice, the
23 Court is stopping short of issuing the harshest possible sanction of dismissal with prejudice.

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

26 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based
27 on Plaintiff’s failure to obey the Court’s order of February 21, 2013.

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 **twenty (20) 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 Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: **April 26, 2013**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE