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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 GEMS PARK,

12 Plaintiff,

13 vs.

14 SIX UNKNOWN NAMES AGENTS,
15 et al.,

16 Defendants.

1:13-cv-01503-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR PLAINTIFF'S
FAILURE TO COMPLY WITH COURT
ORDER
(Doc. 2.)

OBJECTIONS, IF ANY, DUE IN THIRTY
DAYS

17 On September 19, 2013, the Court issued an order requiring Plaintiff to file a signed
18 complaint, and either submit an application to proceed in forma pauperis or pay the filing fee
19 for this action, within thirty days. (Doc. 2.) The thirty day time period has expired, and
20 Plaintiff has not filed a signed complaint, paid the filing fee, submitted an application, or
21 otherwise responded to the Court's order.¹

22 In determining whether to dismiss this action for failure to comply with the directives
23 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in
24 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
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26 ¹ The United States Postal Service returned the order on October 21, 2013 as undeliverable. A notation
27 on the envelope indicates that Plaintiff is not at the facility located at Plaintiff's address of record. However,
28 Plaintiff has not notified the court of any change in his address. Absent such notice, service at a party's prior
address is fully effective. Local Rule 182(f).

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 September 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 submit a
9 complaint bearing his signature. Thus, both the first and second factors weigh in favor of
10 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 respond to the Court’s order that is causing delay. Therefore, the third
15 factor weighs in favor of dismissal.

16 As for the availability of lesser sanctions, at this stage in the proceedings there is little
17 available to the Court which would constitute a satisfactory lesser sanction while protecting the
18 Court from further unnecessary expenditure of its scarce resources. Plaintiff failed to pay the
19 filing fee for this action, making it unlikely that monetary sanctions would be effective, and
20 given the early stage of these proceedings, the preclusion of evidence or witnesses is not
21 available. However, inasmuch as the dismissal being considered in this case is without
22 prejudice, the Court is stopping short of issuing the harshest possible sanction of dismissal with
23 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
27 without prejudice, based on Plaintiff’s failure to obey the Court’s order of September 19, 2013.

