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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 CURLY JOHN BROUSSARD, JR.,

12 Plaintiff,

13 vs.

14 JEFFREY BEARD, et al.,

15 Defendants.  
16

1:13-cv-01569-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS  
TO DISMISS CASE FOR PLAINTIFF'S  
FAILURE TO COMPLY WITH COURT  
ORDER  
(Doc. 16.)

OBJECTIONS, IF ANY, DUE IN THIRTY  
DAYS

17 On October 4, 2013, the court issued an order requiring Plaintiff to submit an  
18 application to proceed in forma pauperis or pay the \$400.00 filing fee for this action, within  
19 thirty days. (Doc. 16.) The thirty day time period has expired, and Plaintiff has not paid the  
20 filing fee, submitted an application, or otherwise responded to the court's order.

21 In determining whether to dismiss this action for failure to comply with the directives  
22 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in  
23 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of  
24 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
25 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d  
26 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

27 "The public's interest in expeditious resolution of litigation always favors dismissal,"  
28 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the

1 action has been pending since June 13, 2013. Plaintiff's failure to respond to the court's order  
2 may reflect Plaintiff's disinterest in prosecuting this case. In such an instance, the court cannot  
3 continue to expend its scarce resources assisting a litigant who will not help himself by  
4 resolving payment of the filing fee for his lawsuit. Thus, both the first and second factors  
5 weigh in favor of dismissal.

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

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

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

21 Accordingly, the court **HEREBY RECOMMENDS** that this action be dismissed  
22 without prejudice, based on Plaintiff's failure to obey the court's order of October 4, 2013.

23 These findings and recommendations are submitted to the United States District Judge  
24 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty  
25 days after being served with these findings and recommendations, Plaintiff may file written  
26 objections with the court. Such a document should be captioned "Objections to Magistrate  
27 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections

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1 within the specified time may waive the right to appeal the District Court's order. Martinez v.  
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 IT IS SO ORDERED.

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7 Dated: November 15, 2013

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE