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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 BERNARDO FERNANDEZ,

12 Plaintiff,

13 vs.

14 SIX UNKNOWN NAMES AGENTS,
15 et al.,

16 Defendants.

1:13-cv-01958-AWI-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 December 6, 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, or submitted the required
21 application.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
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26 ¹ However, on December 16, 2013, Plaintiff filed a notice of interlocutory appeal of the court's December
27 6, 2013 order. (Doc. 3.) The appeal was forwarded to the Ninth Circuit on December 16, 2013 and dismissed by
28 the Ninth Circuit on January 14, 2014. (Docs. 4, 5.)

On December 19, 2013, the United States Postmaster returned the December 6, 2013 order to the court as
undeliverable. (Court Record.) A notation on the envelope indicated that Plaintiff had refused the mail and the
prison was unable to forward the mail. (Id.) Plaintiff has not advised 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 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
2 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
3 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d
4 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

5 "The public's interest in expeditious resolution of litigation always favors dismissal,"
6 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
7 action has been pending since December 2, 2013. Plaintiff's failure to comply with the court's
8 order may reflect Plaintiff's disinterest in prosecuting this case. In such an instance, the court
9 cannot continue to expend its scarce resources assisting a litigant who will not help himself by
10 filing a signed complaint and resolving payment of the filing fee for his lawsuit, pursuant to the
11 court's order. Thus, both the first and second factors weigh in favor of dismissal.

12 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in
13 and of itself to warrant dismissal." Id. (citing Yourish at 991). However, "delay inherently
14 increases the risk that witnesses' memories will fade and evidence will become stale," id., and it
15 is Plaintiff's failure to comply with the court's order that is causing delay. Therefore, the third
16 factor weighs in favor of 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 has not paid the
20 filing fee for this action, making it likely that Plaintiff is indigent, which would make monetary
21 sanctions of little use, and given the early stage of these proceedings, the preclusion of
22 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in
23 this case is without prejudice, the court is stopping short of issuing the harshest possible
24 sanction of dismissal with prejudice.

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

27 Accordingly, the court **HEREBY RECOMMENDS** that this action be dismissed
28 without prejudice, based on Plaintiff's failure to obey the court's order of December 6, 2013.

