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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JOHNNY GAVINO BRIONES,

12 Plaintiff,

13 vs.

14 PLEASANT VALLEY STATE PRISON,
15 et al.,

16 Defendants.
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1:14-cv-00750-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDER
(Doc. 4.)

OBJECTIONS, IF ANY, DUE IN THIRTY
DAYS

18 On May 23, 2014, the Court issued an order requiring Plaintiff to either submit a
19 completed and signed application to proceed in forma pauperis, or pay the \$400.00 filing fee
20 for this action, within thirty days. (Doc. 2.) The thirty day period has now expired, and
21 Plaintiff has not submitted an application, paid the filing fee, or otherwise responded to the
22 Court's order.

23 In determining whether to dismiss this action for failure to comply with the directives
24 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in
25 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
26 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
27 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d
28 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

1 “The public’s interest in expeditious resolution of litigation always favors dismissal,”
2 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
3 action has been pending since May 19, 2014. Plaintiff’s failure to respond to the Court’s order
4 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court cannot
5 continue to expend its scarce resources assisting a litigant who will not help himself by
6 resolving payment of the filing fee for his lawsuit. Thus, both the first and second factors
7 weigh in favor of dismissal.

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

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

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

22 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed based
23 on plaintiff’s failure to obey the Court’s order of May 23, 2014. These findings and
24 recommendations are submitted to the United States District Judge assigned to the case,
25 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being served
26 with these findings and recommendations, Plaintiff may file written objections with the court.
27 Such a document should be captioned “Objections to Magistrate Judge’s Findings and
28 Recommendations.” Plaintiff is advised that failure to file objections within the specified time

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

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4 IT IS SO ORDERED.

5 Dated: July 9, 2014

/s/ Gary S. Austin
6 UNITED STATES MAGISTRATE JUDGE

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