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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 GERRY WILLIAMS,

12 Plaintiff,

13 vs.

14 MARTIN D. BITER,

15 Defendant.  
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1:14-cv-02076-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS  
TO DISMISS CASE FOR FAILURE TO  
OBEY COURT ORDER  
(Doc. 6.)

OBJECTIONS, IF ANY, DUE IN THIRTY  
(30) DAYS

19 On January 15, 2015, the Court issued an order requiring Plaintiff to pay the \$50.00  
20 balance owed for the filing fees for this action, within thirty days. (Doc. 6.) The thirty day  
21 period has now expired, and Plaintiff has not paid the \$50.00 balance owed or otherwise  
22 responded to the 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 December 29, 2014. Plaintiff’s failure to respond to the Court’s  
4 order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court  
5 cannot 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 pay the filing fee for this action that is causing delay. Therefore, the  
12 third 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. Monetary sanctions in this  
16 circumstance are of little use, and given the early stage of these proceedings, the preclusion of  
17 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in  
18 this case is without prejudice, the Court is stopping short of issuing the harshest possible  
19 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 January 15, 2015. 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 (30) days after being  
26 served with these findings and recommendations, Plaintiff may file written objections with the  
27 court. 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 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th  
2 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: February 26, 2015

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