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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 RAYSHON THOMAS,

12 Plaintiff,

13 vs.

14 PEREZ, et al.,

15 Defendants.
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1:16-cv-00192-DAD-GSA-PC

FINDINGS AND RECOMMENDATION TO
DISMISS CASE FOR FAILURE TO OBEY
COURT ORDER
(ECF No. 17.)

OBJECTIONS, IF ANY, DUE IN TWENTY
(20) DAYS

18 On January 20, 2017, the court issued an order requiring Plaintiff to submit a new,
19 appropriately completed application to proceed in forma pauperis, or pay the \$400.00 filing fee
20 for this action within twenty days. (ECF No. 17.) The twenty-day time period has expired and
21 Plaintiff has not paid the filing fee, submitted a new application 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 February 5, 2016. 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 resolve payment
6 of the filing fee for his lawsuit. Thus, both the first and second factors weigh in favor of
7 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
11 it is Plaintiff’s failure to pay the filing fee or submit a new application to proceed in forma
12 pauperis that is causing delay. Therefore, the 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. Given that Plaintiff is a
16 prisoner who has not paid the filing fee for this action, the court finds monetary sanctions of
17 little use, and given the early stage of these proceedings the preclusion of evidence or witnesses
18 is not available. However, inasmuch as the dismissal being considered in this case is without
19 prejudice, the court is stopping short of issuing the harshest possible sanction of dismissal with
20 prejudice.

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

23 Accordingly, **IT IS HEREBY RECOMMENDED** that this case be dismissed based on
24 Plaintiff’s failure to obey the court’s order of January 20, 2017. These findings and
25 recommendations are submitted to the United States District Judge assigned to the case,
26 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty (20) days from the
27 date of service of these findings and recommendations, Plaintiff may file written objections
28 with the Court. Such a document should be captioned “Objections to Magistrate Judge’s

1 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
2 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d
3 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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5 IT IS SO ORDERED.

6 Dated: February 24, 2017

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