

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, 2016. Plaintiff’s failure to respond to 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 resolve payment
10 of the filing fee for his lawsuit. Thus, both the first and second factors weigh in favor of
11 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
15 it is Plaintiff’s failure to pay the filing fee or submit an application to proceed *in forma pauperis*
16 that is causing delay. Therefore, the third 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. Given that Plaintiff is a
20 prisoner who has not paid the filing fee for this action, the Court finds monetary sanctions of
21 little use, and given the early stage of these proceedings, the preclusion of evidence or
22 witnesses is not available. However, inasmuch as the dismissal being considered in this case is
23 without prejudice, the Court is stopping short of issuing the harshest possible sanction of
24 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 based on Plaintiff’s failure to obey the Court’s order of December 28, 2016. These findings and

1 recommendations are submitted to the United States District Judge assigned to the case,
2 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20)** days of the date
3 of service of these findings and recommendations, Plaintiff may file written objections with the
4 Court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
5 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
6 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th
7 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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10 IT IS SO ORDERED.

11 Dated: February 24, 2017

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