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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

OSVALDO VILLA,
Plaintiff,
vs.
A. MARTINEZ, et al.,
Defendants.

1:17-cv-00070-AWI-GSA-PC
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS CASE BE
DISMISSED FOR PLAINTIFF'S FAILURE
TO OBEY COURT ORDER
(ECF No. 3.)
OBJECTIONS, IF ANY, DUE WITHIN
THIRTY (30) DAYS

Oswaldo Villa ("Plaintiff") is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on January 17, 2017. (ECF No. 1.)

On January 20, 2017, the court issued an order requiring Plaintiff to submit an application to proceed in forma pauperis to the court, or pay the \$400.00 filing fee for this case, within thirty days. (ECF No. 3.) More than two months have passed, and Plaintiff has not paid the filing fee, submitted the application, or otherwise responded to the court's order.

In determining whether to dismiss this action for failure to comply with the directives set forth in its order, "the Court must weigh the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the

1 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d
2 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

3 “The public’s interest in expeditious resolution of litigation always favors dismissal,”
4 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
5 action has been pending since January 17, 2017. Plaintiff’s failure to respond to the court’s
6 order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the court
7 cannot continue to expend its scarce resources assisting a litigant who will not resolve the
8 payment of the filing fee for his lawsuit. Thus, both the first and second factors weigh in favor
9 of dismissal.

10 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
11 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
12 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and
13 it is Plaintiff’s failure to submit an application to proceed in forma pauperis to the court or pay
14 the filing fee for his case that is causing delay. Therefore, the third factor weighs in favor of
15 dismissal.

16 As for the availability of lesser sanctions, at this stage in the proceedings there is little
17 available to the court which would constitute a satisfactory lesser sanction while protecting the
18 court from further unnecessary expenditure of its scarce resources. Plaintiff has not paid the
19 filing fee for this action and may be indigent, making monetary sanctions of little use, and
20 given the early stage of these proceedings, the preclusion of evidence or witnesses is not
21 available. However, inasmuch as the dismissal being considered in this case is without
22 prejudice, the court is stopping short of issuing the harshest possible sanction of dismissal with
23 prejudice.

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

26 Accordingly, the Court **HEREBY RECOMMENDS** that this action be dismissed
27 based on Plaintiff’s failure to obey the court’s order of January 20, 2017. These findings and
28 recommendations are submitted to the United States District Judge assigned to the case,

1 pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30) days after being
2 served with these findings and recommendations, Plaintiff may file written objections with the
3 court. Such a document should be captioned “Objections to Magistrate Judge’s Findings and
4 Recommendations.” Plaintiff is advised that failure to file objections within the specified time
5 may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th
6 Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

7
8 IT IS SO ORDERED.

9 Dated: March 24, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE