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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TRAVIS T. BARLOW,

Plaintiff,

vs.

MATEVOUSIAN, et al.,

Defendants.

1:17-cv-01521-AWI-GSA-PC

FINDINGS AND RECOMMENDATION
TO DISMISS CASE FOR FAILURE TO
OBEY COURT ORDER
(ECF No. 5.)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS

I. BACKGROUND

Derrick Brown (“Plaintiff”) is a federal prisoner proceeding *pro se* in this civil rights action pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388 (1971). Plaintiff filed the Complaint commencing this action on November 14, 2017. (ECF No. 1.)

Plaintiff did not pay the filing fee for this action nor submit an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Therefore, on November 17, 2017, the court issued an order requiring Plaintiff to submit an application to proceed *in forma pauperis* or pay

1 the filing fee for this action, within forty-five days. (ECF No. 5.) The forty-five-day time
2 period has now expired, and Plaintiff has not filed an application to proceed *in forma pauperis*
3 or paid the filing fee for this action. Therefore, Plaintiff failed to comply with the court's
4 November 17, 2017, order.

5 **II. DISMISSAL FOR FAILURE TO COMPLY WITH COURT ORDER**

6 In determining whether to dismiss this action for failure to comply with the directives
7 set forth in its order, “the Court must weigh the following factors: (1) the public’s interest in
8 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
9 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
10 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d
11 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

12 “The public’s interest in expeditious resolution of litigation always favors dismissal,”
13 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
14 action has been pending since November 14, 2017. Plaintiff’s failure to comply with the
15 court’s order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the
16 court cannot continue to expend its scarce resources assisting a litigant who will not resolve
17 payment of the filing fee for his lawsuit. Thus, both the first and second factors weigh in favor
18 of dismissal.

19 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
20 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
21 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and
22 it is Plaintiff's failure to pay the filing fee or submit an application to proceed *in forma pauperis*
23 that is causing delay. Therefore, the third factor weighs in favor of dismissal.

24 As for the availability of lesser sanctions, at this stage in the proceedings there is little
25 available to the court which would constitute a satisfactory lesser sanction while protecting the
26 court from further unnecessary expenditure of its scarce resources. Given that Plaintiff is a
27 prisoner proceeding *pro se* who has not paid the filing fee for this action, the court finds
28 monetary sanctions of little use, and given the early stage of these proceedings, the preclusion

1 of evidence or witnesses is not available. However, inasmuch as the dismissal being
2 considered in this case is without prejudice, the court is stopping short of issuing the harshest
3 possible sanction of dismissal with prejudice.

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

6 **III. CONCLUSION AND RECOMMENDATION**

7 Based on the foregoing, the court **HEREBY RECOMMENDS** that this action be
8 dismissed, without prejudice, based on Plaintiff's failure to obey the court's order of November
9 17, 2017.

10 These findings and recommendation are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). **Within**
12 **fourteen (14) days** from the date of service of these findings and recommendation, Plaintiff
13 may file written objections with the court. Such a document should be captioned "Objections
14 to Magistrate Judge's Findings and Recommendation." Plaintiff is advised that failure to file
15 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
16 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
17 (9th Cir. 1991)).

18
19 IT IS SO ORDERED.

20 Dated: January 19, 2018

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