

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 ISAIAH J. PETILLO,

12 Plaintiff,

13 vs.

14 GALLIGER, et al.,

15 Defendants.  
16  
17

**1:18-cv-00217-NONE-GSA-PC**

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THIS CASE BE  
DISMISSED WITHOUT PREJUDICE FOR  
PLAINTIFF'S FAILURE TO COMPLY WITH  
THE COURT'S ORDER REQUIRING HIM TO  
PAY THE FILING FEE  
(ECF No. 44.)**

**OBJECTIONS, IF ANY, DUE IN 14 DAYS**

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Isaiah J. Petillo ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On February 12, 2018, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

On March 29, 2021, the court issued an order revoking Plaintiff's *in forma pauperis* status under 28 U.S.C. § 1915(g) and requiring Plaintiff to pay the \$400.00 filing fee for this action in full within thirty days. (ECF No. 44.) The thirty-day time period has now expired and Plaintiff has not paid the filing fee or otherwise responded to the court's order.

In determining whether to dismiss this action for failure to prosecute or 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;

1 and (5) the public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza,  
2 291 F.3d 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir.  
3 1992) (failure to comply with court orders). see also In re Eisen, 31 F.3d 1447, 1451 (9th Cir.  
4 1994) (failure to prosecute).

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 February 12, 2018. Plaintiff’s failure to respond to the court’s  
8 order may reflect Plaintiff’s disinterest in prosecuting this case or his inability to pay the filing  
9 fee. In such an instance, the court cannot continue to expend its scarce resources assisting a  
10 litigant who will not or cannot resolve payment of the filing fee for his lawsuit. Thus, both the  
11 first and second factors weigh in favor of 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 it  
15 is Plaintiff’s failure to pay the filing fee for this action that is causing delay. Therefore, the third  
16 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. Monetary sanctions in this  
20 circumstance are of little use, and given the early stage of these proceedings, the preclusion of  
21 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in  
22 this case is without prejudice, the court is stopping short of issuing the harshest possible sanction  
23 of dismissal with 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 without  
27 prejudice based on Plaintiff’s failure to obey the court’s order issued on March 29, 2021 requiring  
28 him to pay the filing fee.

