

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

8 PEDRO F. DURAN,

9 Plaintiff,

10 vs.

11 CONNIE GIPSON, et al.,

12 Defendants.
13

1:14-cv-01337-EPG-PC

ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED FOR
PLAINTIFF'S FAILURE TO OBEY COURT
ORDER
(ECF No. 11.)

THIRTY DAY DEADLINE TO RESPOND

14 On May 13, 2016, the Court issued an order requiring Plaintiff to complete documents
15 to initiate service of process and submit the documents to the Court, within thirty days. (ECF
16 No. 11.) More than sixty days have passed, and Plaintiff has not submitted the service
17 documents or otherwise responded to the Court's order.

18 In determining whether to dismiss this action for failure to comply with the directives
19 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in
20 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
21 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
22 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d
23 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

24 "The public's interest in expeditious resolution of litigation always favors dismissal,"
25 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
26 action has been pending since August 28, 2014. Plaintiff's failure to respond to the Court's
27 order may reflect Plaintiff's disinterest in prosecuting this case. In such an instance, the Court
28 cannot continue to expend its scarce resources assisting a litigant who will not do his part to

1 initiate service of process for his lawsuit. Thus, both the first and second factors weigh in favor
2 of dismissal.

3 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
4 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
5 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and
6 it is Plaintiff’s failure to return service documents to the Court that is causing delay. Therefore,
7 the third factor weighs in favor of dismissal.

8 As for the availability of lesser sanctions, at this stage in the proceedings there is little
9 available to the Court which would constitute a satisfactory lesser sanction while protecting the
10 Court from further unnecessary expenditure of its scarce resources. Plaintiff is proceeding *in*
11 *forma pauperis* with this action, making monetary sanctions of little use, and given the early
12 stage of these proceedings, the preclusion of evidence or witnesses is not available. However,
13 inasmuch as the dismissal being considered in this case is without prejudice, the Court is
14 stopping short of issuing the harshest possible sanction of dismissal with prejudice.

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

17 **ORDER TO SHOW CAUSE**

18 In light of the foregoing analysis, Plaintiff is HEREBY ORDERED to respond in
19 writing to this order, within thirty **(30) days** from the date of service of this order, showing
20 cause why this case should not be dismissed for Plaintiff’s failure to comply with the Court’s
21 order issued on May 13, 2016. **Failure to respond to this order will result in dismissal of**
22 **this action, without prejudice.**

23 IT IS SO ORDERED.
24

25 Dated: July 26, 2016

26 /s/ Eric P. Grogan
27 UNITED STATES MAGISTRATE JUDGE
28