1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 SCOTT K. RICKS, Case No. 1:15-cv-00715-DAD-BAM (PC) 12 ORDER TO SHOW CAUSE REGARDING Plaintiff. DEFENDANT'S FAILURE TO FILE A 13 PRETRIAL STATEMENT v. 14 KAMENA, (ECF No. 55) 15 Defendant. **SEVEN (7) DAY DEADLINE** 16 17 Plaintiff Scott K. Ricks ("Plaintiff") is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds 18 19 against Defendant Kamena for failure to protect and deliberate indifference. This matter is set for 20 a telephonic trial confirmation hearing on May 6, 2019, and a jury trial on July 9, 2019. 21 On September 26, 2018, the Court issued a second scheduling order directing Plaintiff to 22 file his pretrial statement on or before April 8, 2019, and directing Defendant to file his pretrial 23 statement on or before April 22, 2019. (ECF No. 55.) This matter was then set for a settlement 24 conference before Magistrate Judge Jennifer L. Thurston on March 4, 2019. (ECF No. 57.) The case did not settle, and therefore the deadlines set in the Court's second scheduling order 25 26 remained in effect. (ECF No. 61.) 27 The deadline for Plaintiff's pretrial statement and motion for attendance of incarcerated 28 witnesses expired, and Plaintiff failed to comply with the Court's scheduling order or to otherwise

1 communicate with the Court. Accordingly, on April 18, 2019, the Court issued an order for 2 Plaintiff to show cause why this action should not be dismissed for failure to comply with a court 3 order and for failure to prosecute. (ECF No. 62.) Plaintiff's response is due on or before May 6, 4 2019. (Id.) 5 On April 22, 2019, in lieu of filing a pretrial statement, Defendant filed a motion to 6 dismiss due to Plaintiff's failure to prosecute. (ECF No. 63.) As Defendant acknowledges, the 7 Court's April 18, 2019 order to show cause did not expressly discharge Defendant's obligation to file a pretrial statement by April 22, 2019. (Id. at 2, n.1.) Defendant argues that he will be 8 9 "extraordinarily prejudiced" if he is required to file a pretrial statement, given Plaintiff's failure to 10 do so. (Id. at 1.) 11 The Court disagrees. While Defendant may be prejudiced to some degree in his trial 12 preparation, Plaintiff's failure to file a pretrial statement does not completely preclude him from 13 preparing and filing his own pretrial statement, to the best of his abilities. As Defendant has not 14 requested an extension of time to file his pretrial statement, and the May 6, 2019 telephonic trial 15 confirmation hearing remains on calendar, the Court finds it would be beneficial for Defendant to 16 submit the required pretrial statement. 17 Accordingly, Defendant is HEREBY ORDERED to show cause by written response 18 regarding Defendant's failure to obey the Court's scheduling order, or to submit his pretrial 19 statement. Defendant's response or pretrial statement is due within seven (7) days from the date 20 of service of this order. 21 IT IS SO ORDERED. 22 /s/Barbara A. McAuli 23 Dated: **April 23, 2019** UNITED STATES MAGISTRATE JUDGE 24 25 26 27

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