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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MICHAEL SCOTT ARCELUS,

12 Plaintiff,

13 vs.

14 MARGARET MIMMS,

15 Defendant.
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1:15-cv-01783-EPG-PC

ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED FOR
PLAINTIFF'S FAILURE TO OBEY COURT
ORDER
(ECF No. 4.)

RESPONSE DUE IN THIRTY (30) DAYS

18 Plaintiff is a civil detainee proceeding *pro se* with this civil rights action pursuant to 42
19 U.S.C. § 1983. On January 28, 2016, Plaintiff consented to Magistrate Judge jurisdiction in
20 this action pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance.
21 (ECF No. 6.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern
22 District of California, the undersigned shall conduct any and all proceedings in the case until
23 such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

24 On December 4, 2015, the Court issued an order requiring Plaintiff to submit an
25 application to proceed *in forma pauperis* or pay the \$400.00 filing fee for this action, within
26 forty-five days. (ECF No. 4.) The forty-five day time period has now expired, and Plaintiff
27 has not submitted an application, paid the filing fee, or otherwise responded to the Court's
28 order.

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

7 “The public’s interest in expeditious resolution of litigation always favors dismissal,”
8 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the
9 action has been pending since November 30, 2015. Plaintiff’s failure to respond to the Court’s
10 order may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court
11 cannot continue to expend its scarce resources assisting a litigant who will not help himself by
12 resolving the payment of the filing fee for his lawsuit. Thus, both the first and second factors
13 weigh in favor of dismissal.

14 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in
15 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently
16 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and it
17 is Plaintiff’s failure to respond to the Court’s order that is causing delay. Therefore, the third
18 factor weighs in favor of dismissal.

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

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

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