

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

11 MICHAEL SCOTT ARCELUS,

12 Plaintiff,

13 vs.

14 MARGARET MIMMS,

15 Defendant.  
16

1:15-cv-01783-EPG-PC

ORDER DISMISSING CASE FOR  
FAILURE TO COMPLY WITH COURT  
ORDER  
(ECF No. 4.)

ORDER FOR CLERK TO CLOSE CASE

17 Michael Scott Arcelus (“Plaintiff”) is a civil detainee proceeding *pro se* with this civil  
18 rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this  
19 action on November 30, 2015. (ECF No. 1.)

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

25 On December 5, 2015, the Court issued an order requiring Plaintiff to submit a non-  
26 prisoner application to proceed *in forma pauperis*, or pay the \$400.00 filing fee for this action,  
27 within thirty days. (ECF No. 4.) The thirty-day time period expired, and Plaintiff failed to  
28 comply with the Court’s order or otherwise respond to the order.

1 On February 8, 2016, the Court issued an order to show cause, requiring Plaintiff to  
2 respond within thirty days showing cause why this case should not be dismissed based on his  
3 failure to comply with the Court's order of December 5, 2015. (ECF No. 7.) Plaintiff was  
4 forewarned in the order to show cause that his failure to respond as required would result in the  
5 dismissal of this case. (Id. at 3 ¶2.) The thirty-day time period has expired, and Plaintiff has  
6 not filed a response to the order to show cause or otherwise respond to the order.

7 In determining whether to dismiss this action for failure to comply with the directives  
8 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in  
9 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of  
10 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
11 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d  
12 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

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

20 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in  
21 and of itself to warrant dismissal." Id. (citing Yourish at 991). However, "delay inherently  
22 increases the risk that witnesses' memories will fade and evidence will become stale," id., and  
23 it is Plaintiff's failure to respond to the Court's order that is causing delay. Therefore, the third  
24 factor weighs in favor of dismissal.

25 As for the availability of lesser sanctions, at this stage in the proceedings there is little  
26 available to the Court which would constitute a satisfactory lesser sanction while protecting the  
27 Court from further unnecessary expenditure of its scarce resources. Plaintiff has not paid the  
28 filing fee for this action, making monetary sanctions of little use, and given the early stage of

1 these proceedings, the preclusion of evidence or witnesses is not available. However, inasmuch  
2 as the dismissal being considered in this case is without prejudice, the Court is stopping short  
3 of issuing the harshest 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 Accordingly, **IT IS HEREBY ORDERED** that:

7 1. This action is DISMISSED, without prejudice, based on Plaintiff's failure to  
8 obey the Court's order of December 4, 2015; and

9 2. The Clerk of Court is directed to CLOSE this case.

10 IT IS SO ORDERED.  
11

12 Dated: April 1, 2016

13 /s/ Eric P. Gray  
14 UNITED STATES MAGISTRATE JUDGE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28