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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ERICK D. HENSON,

12 Plaintiff,

13 vs.

14 FEDERAL BUREAU OF NARCOTICS,
15 et al.,

16 Defendants.
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18

1:16-cv-00670-GSA-PC

ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED FOR
PLAINTIFF'S FAILURE TO OBEY COURT
ORDER
(ECF No. 6.)

THIRTY DAY DEADLINE TO RESPOND

19 On September 29, 2016, the Court issued an order requiring Plaintiff to submit an
20 application to proceed in forma pauperis or pay the \$400 filing fee for this action, within forty-
21 five days. (ECF No. 6.) More than forty-five days have passed and Plaintiff has not paid the
22 filing fee, submitted an application, or otherwise responded to the Court's order.¹

23 In determining whether to dismiss this action for failure to comply with the directives
24 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in
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26 ¹ On October 13, 2016, Plaintiff consented to Magistrate Judge jurisdiction in this action
27 pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 7.) Therefore, pursuant
28 to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any
and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule
Appendix A(k)(3).

1 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
2 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
3 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d
4 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

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 May 2, 2016. Plaintiff’s failure to respond to the Court’s order
8 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court cannot
9 continue to expend its scarce resources assisting a litigant who will not do his part to resolve
10 payment of the filing fee for his lawsuit. Thus, both the first and second factors weigh in favor
11 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
15 it is Plaintiff’s failure to pay the filing fee or submit an application to proceed in forma pauperis
16 that is causing delay. Therefore, the third 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. Plaintiff appears unable or
20 unwilling to pay the filing fee for this action, making monetary sanctions of little use, and given
21 the early stage of these proceedings, the preclusion of evidence or witnesses is not available.
22 However, inasmuch as the dismissal being considered in this case is without prejudice, the
23 Court is stopping short of issuing the harshest possible sanction 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 **ORDER TO SHOW CAUSE**

27 In light of the foregoing analysis, Plaintiff is HEREBY ORDERED to respond in
28 writing to this order, within thirty **(30) days** from the date of service of this order, showing

1 good cause why this case should not be dismissed for Plaintiff's failure to comply with the
2 Court's order issued on September 29, 2016. **Failure to respond to this order will result in**
3 **dismissal of this action, without prejudice.**

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5 IT IS SO ORDERED.

6 Dated: December 8, 2016

/s/ Gary S. Austin
7 UNITED STATES MAGISTRATE JUDGE