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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 DARYL LEON HANSON,

12 Plaintiff,

13 vs.

14 MARGARET MIMMS, et al.,

15 Defendants.  
16  
17

1:17-cv-00576-GSA-PC

ORDER TO SHOW CAUSE WHY CASE  
SHOULD NOT BE DISMISSED FOR  
PLAINTIFF'S FAILURE TO OBEY COURT  
ORDERS  
(ECF Nos. 3, 5.)

FOURTEEN-DAY DEADLINE TO  
RESPOND

18 Daryl Leon Hanson ("Plaintiff") is a Fresno County Jail inmate proceeding pro se and  
19 in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the  
20 Complaint commencing this action on April 24, 2017. (ECF No. 1.)

21 On April 26, 2017 and August 3, 2017, the court issued orders requiring Plaintiff to  
22 complete the court's form indicating whether he consents to or declines Magistrate Judge  
23 jurisdiction, and return the form to the court within thirty days. (ECF Nos. 3, 5.) The thirty-  
24 day time periods have now expired, and Plaintiff has not returned the court's consent/decline  
25 form.

26 In determining whether to dismiss this action for failure to comply with the directives  
27 set forth in its order, "the Court must weigh the following factors: (1) the public's interest in  
28 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of

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

4 ““The public’s interest in expeditious resolution of litigation always favors dismissal,””  
5 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the  
6 action has been pending since April 24, 2017. Plaintiff’s failure to respond to the court’s orders  
7 may reflect Plaintiff’s disinterest in prosecuting this case. In such an instance, the court cannot  
8 continue to expend its scarce resources assisting a litigant who will not respond to court orders.  
9 Thus, both the first and second factors weigh in favor of dismissal.

10 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in  
11 and of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently  
12 increases the risk that witnesses’ memories will fade and evidence will become stale,” id., and  
13 it is Plaintiff’s failure to submit the court’s consent/decline form that is causing delay.  
14 Therefore, the third factor weighs in favor of dismissal.

15 As for the availability of lesser sanctions, at this stage in the proceedings there is little  
16 available to the court which would constitute a satisfactory lesser sanction while protecting the  
17 court from further unnecessary expenditure of its scarce resources. Given that Plaintiff is a pro  
18 se litigant proceeding in forma pauperis in this action, the court finds monetary sanctions of  
19 little use, and given the early stage of these proceedings, the preclusion of evidence or  
20 witnesses is not available. However, inasmuch as the dismissal being considered in this case is  
21 without prejudice, the court is stopping short of issuing the harshest possible sanction of  
22 dismissal with prejudice.

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

### 25 ORDER TO SHOW CAUSE

26 In light of the foregoing analysis, Plaintiff is HEARBY ORDERED to respond in  
27 writing to this order, within **fourteen (14) days** of the date of service of this order, showing  
28 cause why this case should not be dismissed for Plaintiff’s failure to comply with the court’s

1 orders issued on April 26, 2017, and August 3, 2017. **Failure to respond to this order may**  
2 **result in the dismissal of this action, without prejudice.**

3  
4 IT IS SO ORDERED.

5 Dated: September 21, 2017

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