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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY R. ARVIZU,)	1:11-cv-00017-JLT
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
)	DISMISSING THE ACTION WITH
v.)	PREJUDICE FOR LACK OF JURISDICTION
COMMISSIONER OF SOCIAL)	AND FAILURE TO COMPLY WITH THE
SECURITY,)	COURT’S ORDER
)	
)	ORDER DIRECTING CLERK OF THE COURT
)	TO ASSIGN A UNITED STATES DISTRICT
Defendant.)	JUDGE TO CASE

Gregory R. Arvizu (“Plaintiff”) seeks to proceed *in forma pauperis* and *pro se* with an action seeking judicial review of a determination of the Social Security Administration. Plaintiff commenced this action on January 5, 2011 (Doc. 1) and filed his First Amended Complaint on February 7, 2011. (Doc. 4).

On February 14, 2011, the Court issued order to show cause as to why the matter should not be dismissed for lack of jurisdiction. (Doc. 5). Plaintiff was directed to file his response within 21 days of service, or by March 7, 2011. *Id.* at 3. To date, Plaintiff has not complied with or otherwise responded to the Court’s order. For the following reasons, the Court recommends Plaintiff’s First Amended Complaint be **DISMISSED WITH PREJUDICE.**

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1 **I. Screening Requirement**

2 In accord with 28 U.S.C. 1915(e)(2), the Court screened Plaintiff’s First Amended
3 Complaint because he was proceeding *in forma pauperis*. The Court is required to review the
4 complaint, and shall dismiss the case at any time if the Court determines that the allegation of
5 poverty is untrue, or the action or appeal is “frivolous, malicious or fails to state a claim on
6 which relief may be granted; or . . . seeks monetary relief against a defendant who is immune
7 from such relief.” 28 U.S.C. 1915(e)(2).

8 **II. Jurisdiction**

9 Plaintiff seeks review of a decision by the Commissioner of Social Security denying
10 disability benefits. In the First Amended Complaint, Plaintiff states the decision of the Appeal’s
11 Council was postmarked on November 1, 2010, and that “[t]here is no date listed on the letter
12 itself.” (Doc. 4 at 1). However, in an attachment to his original complaint, Plaintiff supplies a
13 document that indicates that the date of the notice was October 29, 2010. (Doc. 1 at 3). In this
14 Notice, the Appeals Council denied Plaintiff’s request for review of the action. *Id.* Therefore,
15 the decision of the administrative law judge became the final decision of the Commissioner of
16 Social Security.

17 The Court has jurisdiction to review decisions regarding Social Security benefits and the
18 denial of disability claims pursuant to 42 U.S.C. § 405(g), which provides in relevant part:

19 Any individual, after any final decision of the Commissioner made after a hearing to
20 which he was a party, irrespective of the amount in controversy, may obtain a review
21 of such decision by a civil action **commenced within sixty days after the mailing
22 to him of such decision** or within such further time as the Commissioner may allow.
Such action shall be brought in the district court of the United States for the judicial
district in which the plaintiff resides, or has his principal place of business . . .

23 *Id.* (emphasis added). Except as provided by statute, “[n]o findings of fact or decision of the
24 Commissioner shall be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. §
25 405(h). These regulations “operate as a statute of limitations setting the time period in which a
26 claimant may appeal a final decision of the Commissioner.” *Berrigan v. Astrue*, 2010 U.S. Dist.

27 LEXIS 115390, at * 4-5 (E.D. Cal. Oct. 29, 2010), *citing Bowen v. City of New York*, 476
28 U.S. 467, 479 (1986); *Matthews v. Eldridge*, 424 U.S. 319, 328 n. 9 (1976). The time limit is a

1 condition on the waiver of sovereign immunity, and it must be strictly construed. *Id.* In addition,
2 the Court may dismiss an action *sua sponte* if it lacks jurisdiction over the matter. *Fielder v.*
3 *Clark*, 714 F.2d 77, 78-79 (9th Cir. 1983).

4 Plaintiff's civil action must have been commenced within sixty days of mailing of the
5 notice from the Appeals Council, or by January 3, 2011. *See* 42 U.S.C. § 405(g). This Court
6 previously stated, "The limitations to final decisions and to a sixty-day filing period serve to
7 compress the time for judicial review and to limit judicial review to the original decision denying
8 benefits, thereby forestalling repetitive or belated litigation of stale eligibility claims." *Anderson*
9 *v. Astrue*, 2009 U.S. Dist. LEXIS 79726, at *8-9 (E.D. Cal. Oct. 7, 2008). Because Plaintiff did
10 not file this action until this deadline passed, the Court is unable to review the decision of the
11 Commissioner.

12 **III. Equitable Tolling**

13 The principle of equitable tolling allows for the statute of limitations to be extended in
14 certain circumstances, because the social security regulations were "designed to be 'unusually
15 protective' of claimants." *Bowen*, 476 U.S. at 480. The Supreme Court noted,

16 [Social Security Administration] regulations governing extensions of time for
17 filing are based on considerations of fairness to claimants. Thus, the Secretary
18 may grant an extension where a suit was not timely filed because of illness,
19 accident, destruction of records, or mistake. Similarly, an extension may be
granted where the claimant misunderstands the appeal process or is unable to
timely collect necessary information, or where the Secretary undertook action that
"misled" the claimant concerning his right to review.

20 *Id.* at 480, n. 12, citing 20 C.F.R. §§ 404.911,416.1411. However, Plaintiff's First Amended
21 Complaint is devoid of factual allegations indicating circumstances for which the statute of
22 limitations should be tolled in equity. Moreover, because Plaintiff failed to respond to the Court's
23 order to show cause, the Court has no information that would indicate that equitable tolling
24 would apply. In fact, the record demonstrates that Plaintiff was advised that he had just 60 days
25 to file his action in this Court. (Doc. 1 at 3) Thus, Plaintiff was fully aware that he had to act
26 within a timely fashion. Thus, the Court has no basis upon which to extend the doctrine of
27 equitable tolling to this matter.

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1 **IV. Failure to Obey the Court's Order**

2 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide: "Failure of counsel or
3 of a party to comply with . . . any order of the Court may be grounds for the imposition by the
4 Court of any and all sanctions . . . within the inherent power of the Court." LR 110. "District
5 courts have inherent power to control their dockets," and in exercising that power, a court may
6 impose sanctions including dismissal of an action. *Thompson v. Housing Authority of Los*
7 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice, based
8 on a party's failure to prosecute an action or failure to obey a court order, or failure to comply
9 with local rules. *See, e.g. Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
10 for failure to comply with an order requiring amendment of complaint); *Malone v. U.S. Postal*
11 *Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with a court order);
12 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute
13 and to comply with local rules).

14 In determining whether to dismiss an action for failure to obey a court order or failure to
15 comply with the Local Rules, the court must consider several factors, including: "(1) the public's
16 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the
17 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
18 merits; and (5) the availability of less drastic sanctions." *Henderson*, 779 F.2d at 1423-24; *see*
19 *also Ferdik*, 963 F.2d at 1260-61; *Thomson*, 782 F.2d at 831.

20 In the case at hand, the public's interest in expeditiously resolving this litigation and the
21 Court's interest in managing the docket weigh in favor of dismissal. The risk of prejudice to the
22 defendants also weighs in favor of dismissal, since a presumption of injury arises from the
23 occurrence of unreasonable delay in prosecution of an action. *See Anderson v. Air West*, 542
24 F.2d 522, 524 (9th Cir. 1976). The policy favoring disposition of cases on their merits is
25 outweighed by the factors in favor of dismissal. Notably, however, the Court finds that the
26 Plaintiff failed to file his appeal within a timely fashion. In the order to show cause, the Court
27 stated it was unable to review the decision of the Commissioner absent a showing by Plaintiff
28 that the statute of limitations should be tolled in equity. (Doc. 5 at 3). Thus, Plaintiff had

1 adequate warning that dismissal would result from his noncompliance with the Court's order.

2 **Order**

3 GOOD CAUSE being established therefor, the Court **HEREBY ORDERS** as follows:

4 1. The Clerk of the Court is DIRECTED to assign a United States District Judge to this
5 case.

6 **Findings and Recommendations**

7 For the foregoing reasons, the Court finds Plaintiff failed to file this action within the
8 applicable statute of limitations. Moreover, Plaintiff failed to comply with the Court's order to
9 show cause why the matter should not be dismissed for lack of jurisdiction. Accordingly it is

10 **HEREBY RECOMMENDED:**

11 1. Plaintiff's First Amended Complaint be **DISMISSED WITH PREJUDICE.**

12 These Findings and Recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the
14 Local Rules of Practice for the United States District Court, Eastern District of California.
15 Within 14 days after being served with these Findings and Recommendations, any party may file
16 written objections with the court. Such a document should be captioned "Objections to
17 Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file
18 objections within the specified time may waive the right to appeal the District Court's order.
19 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

20
21 IT IS SO ORDERED.

22 Dated: March 14, 2011

23 /s/ Jennifer L. Thurston
24 UNITED STATES MAGISTRATE JUDGE
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