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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES TOMPSON RIGGS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

Case No. 1:20-cv-00940-HBK

ORDER OF DISMISSAL WITHOUT  
PREJUDICE<sup>1</sup>

This matter comes before the Court upon review of Plaintiff’s Response to the Court’s Order to Show Cause filed August 31, 2022. (Doc. No. 21). As more fully set forth below, the Court dismisses this case without prejudice.

**I. FACTS AND BACKGROUND**

James Tompson Riggs initiated this action by filing a pro se social security complaint on July 7, 2020. (Doc. No. 1). Plaintiff accompanied his complaint with a motion to proceed *in forma pauperis*. (Doc. No. 2). The Court granted Plaintiff’s motion to proceed *in forma pauperis* and a scheduling order issued on July 9, 2020. (Doc. Nos. 3, 5). On January 14, 2021, the Court entered an order directing Plaintiff to show cause why the action should not be dismissed due to Plaintiff’s failure to provide the necessary forms for service of process on the

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<sup>1</sup> The parties consented to the jurisdiction of the assigned United States magistrate judge. (Doc. No. 6).

1 Commissioner and/or to provide proof of service on the Commissioner. (Doc. No. 7). Plaintiff  
2 filed a response to the Show Cause Order, explaining his confusion and requesting a limited  
3 extension of time to serve the Commissioner. (*See generally* Doc. No. 8). The Court granted  
4 Plaintiff a limited extension of time and Plaintiff timely completed the forms for service on the  
5 Commissioner. (Doc. Nos. 9-11). This matter thereafter was stayed pursuant to General Order  
6 615. (Doc. No. 12).

7 On March 31, 2022, the Court lifted the stay, directed the Commissioner to file the  
8 certified administrative record (“CAR”) and issued an amended scheduling order. (Doc. No. 15).  
9 On April 25, 2022, the Commissioner lodged the CAR, triggering certain deadlines, including a  
10 45-day deadline by which Plaintiff was to file a motion for summary judgment. (Doc. No. 16).  
11 Plaintiff did not timely do so, or otherwise respond. (*See* docket).

12 On August 9, 2022, the Court issued a second order directing Plaintiff to show cause  
13 within fourteen days why the action should not be dismissed due to his failure to prosecute. (Doc.  
14 No. 18). The Court further directed Plaintiff that he must accompany his response to the show  
15 cause order with an opening brief or motion for summary judgment if he wishes to prosecute this  
16 action. (*Id.* at 2). On August 31, 2022, Plaintiff filed a response to the Show Cause Order, but  
17 did not accompany his response with an opening brief or a motion for summary judgment. (Doc.  
18 No. 21). In his one-page response, Plaintiff states he has “developed additional problems with  
19 [his] health” since filing for social security benefits. (*Id.* at 1). More specifically, Plaintiff states  
20 he “had a series of strokes that were TIA’s (transient ischemic attack)” and “was hospitalized for  
21 3 days” in November 2019. (*Id.*). Plaintiff states he sends “this letter” “so [these additional  
22 health problems] can be added to [his] claim to receive disability benefits.” (*Id.*).

## 23 **II. APPLICABLE LAW**

24 Federal Rule of Civil Procedure 41(b) permits the court to involuntarily dismiss an action  
25 when a litigant fails to prosecute an action or fails to comply with other Rules or with a court  
26 order. *See* Fed. R. Civ. P. 41(b); *see Applied Underwriters v. Lichtenegger*, 913 F.3d 884, 889  
27 (9th Cir. 2019) (citations omitted). Similarly, the Local Rules, corresponding with Federal Rule  
28 of Civil Procedure 11, provide, “[f]ailure of ... a party to comply with ... any order of the Court

1 may be grounds for the imposition by the Court of any and all sanctions ... within the inherent  
2 power of the Court.” E.D. Cal. L.R. 110. “District courts have inherent power to control their  
3 dockets” and, in exercising that power, may impose sanctions, including dismissal of an action.  
4 *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may  
5 dismiss an action based on a party’s failure to prosecute an action, obey a court order, or comply  
6 with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal  
7 for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*,  
8 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order);  
9 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and  
10 to comply with local rules).

11 In determining whether to dismiss an action, the Court must consider several factors:  
12 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its  
13 docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring disposition of  
14 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson*, 779 F.2d at  
15 1423; *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

### 16 III. ANALYSIS

17 The Court considers each of the above-stated factors and concludes dismissal is warranted  
18 in this case. The expeditious resolution of litigation is deemed to be in the public interest,  
19 satisfying the first factor. *Yourish v. California Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999).  
20 Turning to the second factor, the Court’s need to efficiently manage its docket cannot be  
21 overstated. This Court has “one of the heaviest caseloads in the nation,” and due to unfilled  
22 judicial vacancies, which is further exacerbated by the Covid-19 pandemic, operates under a  
23 declared judicial emergency. *See Amended Standing Order in Light of Ongoing Judicial*  
24 *Emergency in the Eastern District of California*. The Court finds Plaintiff’s response to the  
25 Court’s Order to Show Cause provides no reason for his inordinate delay in moving this case  
26 forward. Although Plaintiff explains he has developed new medical conditions that required a  
27 short three-day hospitalization, his hospitalization occurred years before he was required to  
28 submit an opening brief in this case. Further, Plaintiff’s “new” disabilities manifested themselves

1 in November 2019, after the Commissioner issued a decision denying Plaintiff's disability  
2 benefits. (*See* Doc. No. 16-1 at 5). Thus, the Court finds that both the first and second factors  
3 weigh in favor of dismissal.

4 Delays have the inevitable and inherent risk that evidence will become stale or witnesses'  
5 memories will fade or be unavailable and can prejudice a defendant, thereby satisfying the third  
6 factor. *See Sibron v. New York*, 392 U.S. 40, 57 (1968). Here, the risk of prejudice to defendant  
7 also weighs in favor of dismissal since a presumption of injury arises from the occurrence of  
8 unreasonable delay in prosecuting an action. *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir.  
9 1976). Plaintiff's inaction amounts to an unreasonable delay in prosecuting this action, weighing  
10 in favor of dismissal for a risk of prejudice to defendants.

11 As to the fourth factor, a preference to rule on the merits usually weighs against dismissal  
12 because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643  
13 (9th Cir. 2002). Plaintiff has not presented any matter on the merits to consider. Plaintiff did not  
14 move for summary judgment or otherwise indicate why he believes the Commissioner erred in  
15 denying his application for disability benefits thus necessitating the order to show cause. Thus,  
16 "this factor lends little support to a party whose responsibility it is to move a case toward  
17 disposition on the merits but whose conduct impedes progress in that direction," which is the case  
18 here. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th  
19 Cir. 2006) (citation omitted). Further, a cursory review of the certified administrative record  
20 shows the appeal's council reviewed the administrative law judge's February 21, 2019 opinion  
21 denying Plaintiff relief because he attempted to raise new evidence from Yang Cao, M.D dated  
22 March 22, 2019 and the time period considered ended February 21, 2019. (*See* Doc. No. 16-1 at  
23 5-6). Similarly, Plaintiff's response to the order to show cause includes incidents which occurred  
24 even later, in November 2019. (*See* Doc. No. 21). In other words, to the extent Plaintiff believes  
25 he has new disabilities stemming from mini strokes occurring in November 2019, on which to  
26 base a new claim for disability benefits, as raised in his Response to the Show Cause Order, these  
27 issues occurred *after* the Commissioner denied his prior disability claim and were not considered  
28 by the Administrative law Judge. The Social Security Administration previously advised Plaintiff

1 that any evidence dated later than the operative disability period requires Plaintiff to file a new  
2 claim for disability benefits. (Doc. No. 16-1 at 6). Finally, the instant dismissal is a dismissal  
3 *without* prejudice, which is a lesser sanction than a dismissal with prejudice, thereby addressing  
4 the fifth factor.

5 Considering these factors and those set forth *supra*, as well as binding case law, the Court  
6 finds dismissal, without prejudice, under Fed. R. Civ. P. 41(b) and Local Rule 110 is appropriate.  
7 *See J. v. Commissioner of Soc. Sec. Admin.*, No. 3:17-cv-02030-MK, 2018 WL 8577588 (D.  
8 Oregon Dec. 12, 2018)(recommending dismissal of social security action for lack of prosecution).

9 Accordingly, it is **ORDERED**:

- 10 1. This action is dismissed without prejudice.
- 11 2. The Clerk of Court shall terminate any pending motions, enter judgment accordingly,  
12 and close this case.

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14 Dated: November 18, 2022

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE

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