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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHANNON O. MURPHY ESQ. SR.,
Plaintiff,
v.
U.S. INTERNAL REVENUE SERVICE,
Defendant.

No. 1:21-cv-00870-NONE-EPG

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS RECOMMENDING
THAT THIS ACTION BE DISMISSED
WITHOUT PREJUDICE FOR FAILURE TO
STATE A CLAIM, FAILURE TO
PROSECUTE, AND FAILURE TO COMPLY
WITH A COURT ORDER

(Doc. No. 5)

Plaintiff Shannon O. Murphy Esq. Sr., doing business as Sheetmetal & Associates, is proceeding *pro se* and *in forma pauperis* in this action. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 24, 2021, the assigned magistrate judge entered findings and recommendations recommending that this case be dismissed without prejudice due to plaintiff’s failure to state a claim, failure to comply with a court order, and failure to prosecute. (Doc. No. 5.) Those findings and recommendations were served on plaintiff and contained notice that any objections thereto were to be filed within fourteen days of the date of service. (*Id.*)

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1 On September 10, 2021, plaintiff filed objections to the findings and recommendations
2 which, among other things, indicated that plaintiff's response to the court's screening order was
3 erroneously filed as a separate case, *Murphy v. U.S. Internal Revenue Service Taxpayer Advocate*,
4 Case No. 1:21-cv01238-DAD-SKO, and was not filed in this case. (Doc. No. 6.) Plaintiff's
5 objections also indicated that the copy of the findings and recommendations that he received only
6 contained the first and last page. (*Id.*)

7 On September 15, 2021, the assigned magistrate judge entered an order granting plaintiff
8 leave to file an amended complaint or notice that he wished to stand on his original complaint
9 within thirty days. (Doc. No. 8.) The order also directed the Clerk of Court to provide plaintiff
10 with copies of the July 9, 2021 screening order and August 24, 2021 findings and
11 recommendations. (*Id.* at 5.) The assigned magistrate judge did not vacate the August 24, 2021
12 findings and recommendations but rather informed plaintiff that, if he filed an amended
13 complaint, the pending findings and recommendations may be vacated if appropriate. (*Id.* at 4.)
14 Nonetheless, plaintiff has not filed an amended complaint, and the deadline to do so has expired.

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
16 *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings
17 and recommendations to be supported by the record and by proper analysis.

18 Accordingly,

- 19 1. The findings and recommendations entered on August 24, 2021 (Doc. No. 5), are
20 adopted in full;
- 21 2. This action is dismissed without prejudice due to plaintiff's failure to state a claim,
22 failure to prosecute, and failure to comply with a court order; and
- 23 3. The Clerk of the Court is directed to assign a district judge for the purpose of closing
24 this case and then to close the case.

25 IT IS SO ORDERED.

26 Dated: December 15, 2021

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UNITED STATES DISTRICT JUDGE