



1 On May 23, 2017, plaintiff filed a response to the May 11, 2017 order to show cause.  
2 (ECF No. 6.) Accordingly, on June 13, 2017, the undersigned issued an order discharging the  
3 May 11, 2017 order to show cause and continuing the Status (Pretrial Scheduling) Conference to  
4 August 11, 2017. (ECF No. 7.) The order also ordered plaintiff to file a status report on or before  
5 July 28, 2017. Moreover, the order cautioned plaintiff that failure to timely comply with the  
6 order might result in a recommendation that this case be dismissed. (Id. at 2.) Nonetheless, the  
7 time provided plaintiff has expired and plaintiff has not responded to the June 13, 2017 order in  
8 any way. Nor has plaintiff filed proof of service on a defendant and no defendant has appeared in  
9 this action.

#### 10 ANALYSIS

11 The factors to be weighed in determining whether to dismiss a case for lack of prosecution  
12 are as follows: (1) the public interest in expeditious resolution of litigation; (2) the court's need  
13 to manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring  
14 disposition on the merits; and (5) the availability of less drastic sanctions. Hernandez v. City of  
15 El Monte, 138 F.3d 393, 398 (9th Cir. 1998); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.  
16 1992); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988). Dismissal is a harsh penalty that  
17 should be imposed only in extreme circumstances. Hernandez, 138 F.3d at 398; Ferdik, 963 F.2d  
18 at 1260.

19 Failure of a party to comply with the any order of the court “may be grounds for  
20 imposition by the Court of any and all sanctions authorized by statute or Rule or within the  
21 inherent power of the Court.” Local Rule 110. Any individual representing himself or herself  
22 without an attorney is nonetheless bound by the Federal Rules of Civil Procedure, the Local  
23 Rules, and all applicable law. Local Rule 183(a). A party's failure to comply with applicable  
24 rules and law may be grounds for dismissal or any other sanction appropriate under the Local  
25 Rules. Id.

26 Here, plaintiff has repeatedly failed to comply with the court's orders. The June 13, 2017  
27 order specifically warned plaintiff that the failure to timely comply with that order could result in  
28 a recommendation that this matter be dismissed. Plaintiff failed to respond to that order in any

1 manner. Moreover, Rule 4(m) of the Federal Rules of Civil Procedure provides that a defendant  
2 must be dismissed if service of the summons and complaint is not accomplished on the defendant  
3 within 90 days after the complaint was filed. More than seven months have passed since  
4 plaintiff's complaint was filed and the docket does not reflect proof of service on, or the  
5 appearance of, any defendant.

6 In this regard, plaintiff's lack of prosecution of this case renders the imposition of  
7 monetary sanctions futile. Moreover, the public interest in expeditious resolution of litigation, the  
8 court's need to manage its docket, and the risk of prejudice to the defendants all support the  
9 imposition of the sanction of dismissal. Only the public policy favoring disposition on the merits  
10 counsels against dismissal. However, plaintiff's failure to prosecute the action in any way makes  
11 disposition on the merits an impossibility. The undersigned will therefore recommend that this  
12 action be dismissed due to plaintiff's failure to prosecute as well as plaintiff's failure to comply  
13 with the court's orders. See Fed. R. Civ. P. 41(b).

14 Accordingly, IT IS HEREBY ORDERED that the August 11, 2017 Status (Pretrial  
15 Scheduling) Conference is vacated.

16 Also, IT IS HEREBY RECOMMENDED that:

- 17 1) Plaintiff's December 28, 2016 complaint (ECF No. 1) be dismissed without prejudice;  
18 and  
19 2) This action be closed.

20 These findings and recommendations will be submitted to the United States District Judge  
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
22 days after being served with these findings and recommendations, plaintiff may file written  
23 objections with the court. A document containing objections should be titled "Objections to  
24 Magistrate Judge's Findings and Recommendations."

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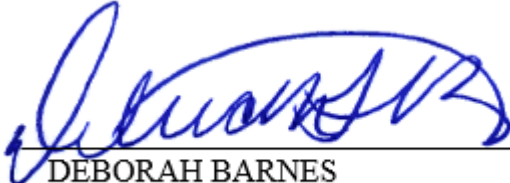
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Plaintiff is advised that failure to file objections within the specified time may, under certain circumstances, waive the right to appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: August 8, 2017



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

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