

1 failure to file a written response to that order could result in the undersigned recommending that
2 this matter be dismissed. (Id. at 2.) Nonetheless, the time provided plaintiff has expired and
3 plaintiff has not responded to the order to show cause in any way.

4 ANALYSIS

5 The factors to be weighed in determining whether to dismiss a case for lack of prosecution
6 are as follows: (1) the public interest in expeditious resolution of litigation; (2) the court's need
7 to manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring
8 disposition on the merits; and (5) the availability of less drastic sanctions. Hernandez v. City of
9 El Monte, 138 F.3d 393, 398 (9th Cir. 1998); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.
10 1992); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988). Dismissal is a harsh penalty that
11 should be imposed only in extreme circumstances. Hernandez, 138 F.3d at 398; Ferdik, 963 F.2d
12 at 1260.

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

20 Here, plaintiff failed to file a statement of opposition or non-opposition to defendant's
21 motion to dismiss. The undersigned issued an order to show cause that provided plaintiff with an
22 opportunity to show good cause for plaintiff's conduct, along with a further opportunity to oppose
23 defendant's motion. Plaintiff failed to respond to that order in any way. The order to show cause
24 specifically warned plaintiff that the failure to file a written response to that order could result in a
25 recommendation that this matter be dismissed.

26 Plaintiff's lack of prosecution of this case renders the imposition of monetary sanctions
27 futile. Moreover, the public interest in expeditious resolution of litigation, the court's need to
28 manage its docket, and the risk of prejudice to the defendant all support the imposition of the

1 sanction of dismissal. Only the public policy favoring disposition on the merits counsels against
2 dismissal. However, plaintiff's failure to prosecute the action in any way makes disposition on
3 the merits an impossibility. The undersigned will therefore recommend that this action be
4 dismissed due to plaintiff's failure to prosecute as well as plaintiff's failure to comply with the
5 court's orders. See Fed. R. Civ. P. 41(b).

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1) The March 17, 2017 hearing of defendant's motion is vacated; and
8 2) Defendant's January 17, 2017 motion to dismiss (ECF No. 3) is denied without
9 prejudice as having been rendered moot.¹

10 Also, IT IS HEREBY RECOMMENDED that:

- 11 1) Plaintiff's November 28, 2016 complaint (ECF No. 1-1) be dismissed without
12 prejudice; and
13 2) This action be closed.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
19 shall be served and filed within fourteen days after service of the objections. The parties are
20 advised that failure to file objections within the specified time may waive the right to appeal the
21 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 Dated: March 9, 2017

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27
28 DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

¹ In the event the assigned District Judge does not adopt these findings and recommendation, defendant may re-notice its motion to dismiss for hearing before the undersigned.