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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RON SINGH and KAREN SINGH,

Plaintiffs,

v.

COUNTY OF SACRAMENTO, et al.,

Defendants.

No. 2:17-cv-2580 TLN DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiffs Ron Singh and Karen Singh are proceeding pro se. The case has been referred to the undersigned pursuant to Local Rule 302(c)(21). On December 7, 2018, the matter came before the undersigned for a hearing regarding service of process on the defendants. There was no appearance by, or on behalf of, any party, in violation of the undersigned’s order issued on November 13, 2018.

This is not the first time plaintiffs have failed to comply with an order of this court. On February 12, 2018, the undersigned issued an order setting this matter for a March 23, 2018 Status (Pretrial Scheduling) Conference. (ECF No. 4.) On March 22, 2018—the day before the March 23, 2018 status conference—plaintiffs filed a request to continue the March 23, 2018 status conference because they had “a trial in other court at the same time.” (ECF No. 7 at 1.)

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1           On March 27, 2018, the undersigned issued an order granting plaintiffs' request to  
2 continue the status conference to May 25, 2018. (ECF No. 9 at 1.) The March 27, 2018 order  
3 also advised plaintiffs that the undersigned would "have some questions for plaintiffs with respect  
4 to service at the" May 25, 2018 status conference. (Id.) Plaintiffs were also ordered to serve a  
5 copy of the March 27, 2018 order on each defendant within fourteen days and to file proof of  
6 service of that order on the defendants within five days thereafter. (Id. at 2.)

7           On April 26, 2018, plaintiffs filed a one paragraph status report and a request for entry of  
8 default as to all defendants. (ECF Nos. 10 & 11.) On May 2, 2018, the Clerk of the Court  
9 entered default as to defendant County of Sacramento, but declined entry of default as to all other  
10 defendants. (ECF Nos. 14 & 15.) Plaintiffs, however, failed to file proof of service of the March  
11 27, 2018 order on the defendants in violation of that order.

12           Accordingly, on May 17, 2018, the undersigned issued to plaintiffs an order to show  
13 cause. (ECF No. 16.) Therein, the undersigned advised plaintiffs of their failure to comply with  
14 the March 27, 2018 order. (Id. at 1.) The order also advised plaintiffs that it appeared that the  
15 purported service of process on defendant County of Sacramento failed to comply with Rule 4 of  
16 the Federal Rules of Civil Procedure, with California Code of Civil Procedure § 416.50, and with  
17 Local Rule 210(b). (Id. at 1-2.)

18           The order to show cause ordered plaintiffs to show cause in writing within fourteen days  
19 as to why plaintiffs should not be sanctioned for failing to comply with the March 27, 2018 order.  
20 (Id. at 2.) Plaintiffs were also ordered to serve upon each defendant one copy of May 17, 2018  
21 order within fourteen days and, within five days thereafter, file a certificate of service that  
22 included the name of the person served, the address of the person served, and the date and manner  
23 of service on the defendants. (Id.)

24           On June 15, 2018, plaintiffs again filed a one paragraph status report and a motion for  
25 default judgment as to defendant County of Sacramento. (ECF Nos. 17 & 18.) The proofs of  
26 service filed in connection with those documents show that plaintiffs continued to fail to comply  
27 with the Federal Rules of Civil Procedure, the California Code of Civil Procedure, and the Local  
28 Rules. (ECF No. 17 at 2; ECF No. 18 at 4.) Moreover, plaintiffs failed to timely comply with the

1 undersigned's May 17, 2018 order by failing to file proof of service of that order on the  
2 defendants.

3 Therefore, on June 19, 2018, the undersigned issued findings and recommendations,  
4 recommending that this action be dismissed without prejudice due to plaintiffs' failure to  
5 prosecute. (ECF No. 19.) However, that same day an untimely response to the order to show  
6 cause from plaintiffs and another purported proof of service was entered on the court's docket.  
7 (ECF Nos. 20 & 21.) Plaintiffs' response to the order to show cause asserted that they "did not  
8 receive the OSCs for unknown reasons." (ECF No. 20 at 1.) On July 3, 2018, plaintiffs filed a  
9 motion for reconsideration and objections to the June 19, 2018 findings and recommendations.  
10 (ECF Nos. 22 & 23.)

11 In light of plaintiffs' filings, the undersigned granted plaintiffs' motion for reconsideration  
12 and vacated the June 19, 2018 findings and recommendations in an order issued on September 26,  
13 2018. (ECF No. 24 at 2.) That order also stated:

14 The undersigned, however, continues to have concerns about  
15 plaintiffs' purported service on the defendants. Specifically,  
16 plaintiffs' proofs of service are executed by a Scott Smith who  
resides at 1200 North B Street, Sacramento, CA 95814. (ECF No. 6  
at 1; ECF No. 12 at 1; ECF No. 21 at 1.)

17 In Raj Singh, Karen Singh v. Wells Fargo Bank, No. 2:15-cv-2664  
18 JAM EFB PS, the magistrate judge in that action noted, in addressing  
19 purported service by a Jason Smith, that this address is the address  
20 for the Salvation Army Shelter Services Center. Singh v. Wells  
21 Fargo Bank, No. 2:15-cv-2664 JAM EFB PS (E.D. Cal. Aug. 1,  
22 2016). The magistrate judge in that action required the plaintiffs in  
that action to produce Jason Smith for a hearing regarding the  
purported service of process. (Id.) It appears from the docket in that  
action that the plaintiffs in that action were unable to produce Jason  
Smith, but were able to effect proper service after utilizing another  
process server.

23 Here, the undersigned will order plaintiffs to produce Scott Smith.  
24 Also, given some of the similarities between this action and the Wells  
25 Fargo matter discussed above, plaintiffs will be ordered to provide  
the court with a list of any current or former actions involving either  
plaintiff, under any name, filed in this court.

26 (Id. at 2-3.)

27 Accordingly, each plaintiff was ordered to appear in person for a hearing regarding  
28 service of process on the defendants on November 16, 2018. (Id. at 3.) Plaintiffs were also

1 ordered to produce Scott Smith for that hearing and to file a document listing all cases, past and  
2 present, involving either plaintiff filed in this court. (Id. at 3-4.) Plaintiffs were also ordered to  
3 serve a copy of that order on the defendants and file proof of service on or before October 12,  
4 2018. (Id. at 3.)

5 On October 10, 2018, plaintiffs filed a motion “to decide this case on the merits[.]” (ECF  
6 No. 25.) That same day, plaintiffs also filed another purported proof of service. (ECF No. 26.)  
7 That document reflects that service was completed by a “Ramona Garcia.” (Id.) On November 8,  
8 2018, plaintiffs filed a request to continue the November 16, 2018 hearing. (ECF No. 27.) The  
9 request to continue did not address the undersigned’s order that plaintiffs file a document listing  
10 all cases, past and present, involving either plaintiff filed in this court. And plaintiffs never filed  
11 that document.

12 On November 13, 2018, the undersigned issued an order granting plaintiffs’ request to  
13 continue the hearing. (ECF No. 28.) The hearing regarding service was continued to December  
14 7, 2018. (Id. at 2.) The order stated: “Each plaintiff shall appear in person at the hearing  
15 regarding service of process on the defendants[.]” (Id.) (emphasis in original). Plaintiffs were  
16 also ordered to produce Scott Smith and Ramona Garcia at the December 7, 2018 hearing.  
17 Moreover, on or before November 30, 2018, plaintiffs were to serve a copy of that order on the  
18 defendants, file proof of service of that order on the defendants, and file a document listing all  
19 cases, past and present, involving either plaintiff filed in this court. (Id.) Plaintiffs never  
20 responded to that order in any manner and plaintiffs failed to appear at the December 7, 2018  
21 hearing.

## 22 ANALYSIS

23 The factors to be weighed in determining whether to dismiss a case for lack of prosecution  
24 are as follows: (1) the public interest in expeditious resolution of litigation; (2) the court’s need to  
25 manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring  
26 disposition on the merits; and (5) the availability of less drastic sanctions. Hernandez v. City of  
27 El Monte, 138 F.3d 393, 398 (9th Cir. 1998); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.  
28 1992); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988). Dismissal is a harsh penalty that

1 should be imposed only in extreme circumstances. Hernandez, 138 F.3d at 398; Ferdik, 963 F.2d  
2 at 1260.

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

10 Here, as recounted above, plaintiffs have repeatedly failed to comply with the court’s  
11 orders. Plaintiffs have been repeatedly warned that the failure to timely comply with the court’s  
12 orders could result in a recommendation that this matter be dismissed. (ECF No. 4 at 2-3; ECF  
13 No. 9 at 3; ECF No. 16 at 4.) This action was previously on the verge of dismissal due to  
14 plaintiffs’ failure to prosecute. (ECF No. 19.) And plaintiffs were repeatedly and explicitly  
15 ordered to file a document listing all cases, past and present, involving either plaintiff and to  
16 appear at the hearing regarding service of process.

17 Despite all this, plaintiffs failed to file that document and failed to appear at the December  
18 7, 2018 hearing. In this regard, plaintiffs’ lack of prosecution of this case renders the imposition  
19 of monetary sanctions futile.<sup>1</sup> Moreover, the public interest in expeditious resolution of litigation,  
20 the court’s need to manage its docket, and the risk of prejudice to the defendants all support the  
21 imposition of the sanction of dismissal. Only the public policy favoring disposition on the merits  
22 counsels against dismissal. However, plaintiffs’ repeated failure to comply with the  
23 undersigned’s orders and failure to appear makes disposition on the merits an impossibility. The  
24 undersigned will therefore recommend that this action be dismissed due to plaintiffs’ failure to  
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26 <sup>1</sup> In the event plaintiffs resume prosecution of this case and these findings and recommendations  
27 are not adopted by the assigned District Judge, the undersigned will reconsider the imposition of  
28 monetary sanctions against plaintiffs given their repeated failure to comply with the  
undersigned’s orders.


1 prosecute as well as plaintiffs' failure to comply with the court's orders. See Fed. R. Civ. P.  
2 41(b).

3 Accordingly, IT IS HEREBY RECOMMENDED that:

- 4 1. Plaintiffs' December 8, 2017 complaint (ECF No. 1) be dismissed without prejudice;  
5 and  
6 2. This action be closed.

7 These findings and recommendations will be submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
9 days after being served with these findings and recommendations, plaintiffs may file written  
10 objections with the court. A document containing objections should be titled "Objections to  
11 Magistrate Judge's Findings and Recommendations." Plaintiffs are advised that failure to file  
12 objections within the specified time may, under certain circumstances, waive the right to appeal  
13 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 Dated: December 7, 2018

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17 DEBORAH BARNES  
18 UNITED STATES MAGISTRATE JUDGE  
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