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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GEORGE KAPPES, III,
Plaintiff,
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

No. 2:18-cv-0002 JAM DB PS

FINDINGS AND RECOMMENDATIONS

On May 28, 2019, the undersigned issued an order to show cause, ordering plaintiff to show cause in writing within fourteen days as to why this case should not be dismissed for lack of prosecution due to plaintiff’s failure to file a timely motion for summary judgment. (ECF No. 15.) The 14-day period has passed and plaintiff has not responded to the court’s order in any manner.¹

ANALYSIS

The factors to be weighed in determining whether to dismiss a case for lack of prosecution are as follows: (1) the public interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring

¹ This is the second time plaintiff has been issued an order to show cause for failure to prosecute. (ECF No. 7.)

1 disposition on the merits; and (5) the availability of less drastic sanctions. Hernandez v. City of
2 El Monte, 138 F.3d 393, 398 (9th Cir. 1998); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.
3 1992); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988). Dismissal is a harsh penalty that
4 should be imposed only in extreme circumstances. Hernandez, 138 F.3d at 398; Ferdik, 963 F.2d
5 at 1260.

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

13 Here, plaintiff failed to file a timely motion for summary judgment. Accordingly, the
14 undersigned issued an order to show cause, that provided plaintiff with an opportunity to show
15 good cause for plaintiff’s conduct. Plaintiff failed to respond to that order in any way. Plaintiff’s
16 lack of prosecution of this case renders the imposition of monetary sanctions futile. Moreover,
17 the public interest in expeditious resolution of litigation, the court’s need to manage its docket,
18 and the risk of prejudice to the defendant all support the imposition of the sanction of dismissal.
19 Only the public policy favoring disposition on the merits counsels against dismissal. However,
20 plaintiff’s failure to prosecute the action in any way makes disposition on the merits an
21 impossibility.

22 The undersigned will therefore recommend that this action be dismissed due to plaintiff’s
23 failure to prosecute as well as plaintiff’s failure to comply with the court’s orders. See Fed. R.
24 Civ. P. 41(b).


25 Accordingly, IT IS HEREBY RECOMMENDED that:

- 26 1. Plaintiff’s January 2, 2018 complaint (ECF No. 1) be dismissed without prejudice; and
- 27 2. This action be closed.

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

8 Dated: June 21, 2019

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12 DEBORAH BARNES
13 UNITED STATES MAGISTRATE JUDGE
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