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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 DB

ORDER

On January 23, 2018, the undersigned granted plaintiff's motion to proceed in forma pauperis and ordered plaintiff to submit to the United States Marshal the documents necessary for service of process. (ECF No. 3.) Plaintiff was also ordered to file in this court a declaration stating the date on which the documents were submitted to the United States Marshal within five days after submitting those documents. Despite the considerable passage of time, plaintiff did not file those documents and a defendant never appeared this action.

Accordingly, on August 27, 2018, the undersigned issued an order to show cause, ordering plaintiff to show cause in writing within 21 days as to why this case should not be dismissed for lack of prosecution. (ECF No. 6.) The 21-day period has passed and plaintiff has not responded to the court's order in any manner.

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1 ANALYSIS

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

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

17 Here, plaintiff failed to file a timely declaration stating the date on which service
18 documents were submitted to the United States Marshal, possibly because plaintiff did not submit
19 such service documents to the United States Marshal. Accordingly, the undersigned issued an
20 order to show cause that provided plaintiff with an opportunity to show good cause for plaintiff’s
21 conduct. Plaintiff failed to respond to that order in any way. The order to show cause
22 specifically warned plaintiff that the failure to respond to that order could result in the dismissal
23 of this action. (ECF No. 6 at 2.)

24 Plaintiff’s lack of prosecution of this case renders the imposition of monetary sanctions
25 futile. Moreover, the public interest in expeditious resolution of litigation, the court’s need to
26 manage its docket, and the risk of prejudice to the defendant all support the imposition of the
27 sanction of dismissal. Only the public policy favoring disposition on the merits counsels against
28 dismissal. However, plaintiff’s failure to prosecute the action in any way makes disposition on

1 the merits an impossibility. The undersigned will therefore recommend that this action be
2 dismissed due to plaintiff's failure to prosecute as well as plaintiff's failure to comply with the
3 court's orders. See Fed. R. Civ. P. 41(b).


4 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court randomly assign a
5 District Judge to this action.

6 Also, IT IS HEREBY RECOMMENDED that:

- 7 1. Plaintiff's January 2, 2018 complaint (ECF No. 1) be dismissed without prejudice; and
- 8 2. This action be closed.

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

16 Dated: September 25, 2018

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20 DEBORAH BARNES
21 UNITED STATES MAGISTRATE JUDGE

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