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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DARREN CHRISTOPHER CARTER,  
  
Plaintiff,  
  
v.  
  
MEGAN J. BRENNAN, Postmaster  
General,  
  
Defendant.

No. 2:18-cv-00823 MCE AC PS

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action pro se. The action was accordingly referred to the undersigned for pretrial matters by E.D. Cal. R. (“Local Rule”) 302(c)(21). On January 4, 2018, the District Judge assigned to this case adopted Findings and Recommendations (ECF No. 14) issued by the undersigned dismissing plaintiff’s complaint and allowing the filing of an amended complaint within 30 days. ECF No. 15. Plaintiff did not file an amended complaint within the time limit, and has not filed an amended complaint to date, even though nearly one year has passed. On November 6, 2019, defendant moved to dismiss with prejudice for lack of prosecution. ECF No. 16. Plaintiff did not file a response. ECF No. 17. Plaintiff has not responded to the court’s orders, nor taken any action to prosecute this case.

Under Fed. R. Civ. P. 41(b), a defendant may move to dismiss an action if the plaintiff fails to prosecute the case or comply with the Federal Rules or a court order. See Fed. R. Civ. P.


1 41(b). “When a plaintiff, who has been given the opportunity to amend the complaint or have his  
2 or her action dismissed, does nothing, a Rule 41(b) dismissal is the appropriate sanction.”  
3 Moralez v. City of Fresno, No. 06-0224, 2006 WL 2085036, at \*2 (E.D. Cal. July 25, 2006)  
4 (emphasis in original); accord, e.g., Harris v. Mangum, 863 F.3d 1133, 1142 (9th Cir. 2017). To  
5 dismiss an action under Rule 41(b), a court considers (1) the public’s interest in expeditious  
6 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to  
7 defendants; (4) the availability of less drastic sanctions; and (5) the public policy favoring  
8 disposition of cases on the merits. Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002).

9 Here, all factors favor dismissal with prejudice for failure to prosecute. It appears plaintiff  
10 has abandoned this case. The public’s interest in expeditious resolution of litigation is not met,  
11 the court cannot manage its docket, and the defendant is prejudiced where plaintiff fails to take  
12 any action for nearly one year. In the absence of any action by plaintiff, no less drastic sanctions  
13 are available. The public interest in disposing of cases on their merits cannot outweigh these  
14 realities.

15 Therefore, IT IS HEREBY RECOMMENDED that defendant’s motion to dismiss (ECF  
16 No. 16) be GRANTED, and that this action be dismissed with prejudice for lack of prosecution  
17 and for failure to comply with the court’s order. See Fed. R. Civ. P. 41(b); Local Rule 110.

18 These findings and recommendations are submitted to the United States District Judge  
19 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one  
20 (21) days after being served with these findings and recommendations, any party may file written  
21 objections with the court. Such document should be captioned “Objections to Magistrate Judge’s  
22 Findings and Recommendations.” Local Rule 304(d). Failure to file objections within the  
23 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951  
24 F.2d 1153 (9th Cir. 1991).

25 DATED: December 17, 2019

26   
27 ALLISON CLAIRE  
28 UNITED STATES MAGISTRATE JUDGE