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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHALLA C. ALFARO BRITTANY,
Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

No. 2:18-cv-0925 JAM DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff, Michalla Alfaro Brittany, has requested authority under 28 U.S.C. § 1915 to proceed in forma pauperis. (ECF No. 2.) Plaintiff is proceeding in this action pro se. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

On October 11, 2018, the undersigned issued an order noting that plaintiff’s application to proceed in forma pauperis failed to show that plaintiff was unable to pay the required filing fee. (ECF No. 3.) Plaintiff was given twenty-one days to submit the appropriate filing fee. (Id. at 2.) The twenty-one day period has passed and plaintiff has not responded to the court’s order in any manner.

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

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

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

14 Here, plaintiff failed to comply with, or even respond to, the undersigned’s October 11,
15 2018 order. That order explicitly warned plaintiff that the failure to comply “in a timely manner
16 may result in a recommendation that this action be dismissed.” (ECF No. 3 at 2.) Nonetheless,
17 plaintiff has failed to respond to that order.

18 In this regard, plaintiff’s lack of prosecution of this case renders the imposition of
19 monetary sanctions futile. Moreover, the public interest in expeditious resolution of litigation, the
20 court’s need to manage its docket, and the risk of prejudice to the defendant all support the
21 imposition of the sanction of dismissal. Only the public policy favoring disposition on the merits
22 counsels against dismissal. However, plaintiff’s failure to prosecute the action in any way makes
23 disposition on the merits an impossibility. The undersigned will therefore recommend that this
24 action be dismissed due to plaintiff’s failure to prosecute as well as plaintiff’s failure to comply
25 with the court’s orders. See Fed. R. Civ. P. 41(b).

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Accordingly, IT IS HEREBY RECOMMENDED that:

1. Plaintiff’s April 16, 2018 complaint (ECF No. 1) be dismissed without prejudice; and
2. This action be closed.

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

Dated: November 15, 2018


DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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DB/orders/orders.pro se/brittany0925.dlop.f&rs