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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VLADISLAV VYACHESLAVOVICH
STARZYK,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, U.S. CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendants.

No. 2:19-cv-1796 TLN DB PS

FINDINGS AND RECOMMENDATIONS

Plaintiff Vladislav Starchyk is proceeding in this action pro se and in forma pauperis. This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). On March 30, 2020, the undersigned granted plaintiff’s motion to proceed in forma pauperis. (ECF No. 3.) That same day plaintiff was served with a letter that advised plaintiff that Rule 4(m) of the Federal Rules of Civil Procedure provides that a defendant must be dismissed if service of the summons and complaint is not accomplished on the defendant within 90 days after the complaint was filed. (ECF No. 5.)

More than 90 days passed, and the docket failed to reflect proof of service on, or the appearance of, any defendant. Accordingly, on October 2, 2020, the undersigned issued an order to show cause as to why this action should not be dismissed for lack of prosecution. (ECF No. 6.)

1 Plaintiff was ordered to show cause in writing within fourteen days. The fourteen-day period has
2 long passed, and plaintiff has not responded in any manner.

3 ANALYSIS

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

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

19 Here, plaintiff failed to comply with multiple orders of this court. Plaintiff was given
20 multiple opportunities to demonstrate an intent to prosecute this action and has failed to do so. In
21 this regard, plaintiff's lack of prosecution of this case renders the imposition of monetary
22 sanctions futile. Moreover, the public interest in expeditious resolution of litigation, the court's
23 need to manage its docket, and the risk of prejudice to the defendant all support the imposition of
24 the sanction of dismissal. Only the public policy favoring disposition on the merits counsels
25 against dismissal. However, plaintiff's failure to prosecute the action in any way makes
26 disposition on the merits an impossibility. The undersigned will therefore recommend that this
27 action be dismissed due to plaintiff's failure to prosecute as well as plaintiff's failure to comply
28 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 September 19, 2019 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 thirty (30) days after being served with these findings and recommendations, plaintiff 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: December 2, 2020



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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DB/orders/orders.pro se/starchyk1796.dlop.f&rs