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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   HOSSEIN HAMIDI,   No. 2:19-cv-2434 MCE DB PS

12   Plaintiff,

13   FINDINGS AND RECOMMENDATIONS

            v.

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      U.S. DEPARTMENT OF HOMELAND
15   SECURITY, (USCIS),

16   Defendants.

17

18   Plaintiff Hossein Hamidi is proceeding in this action pro se. This matter was referred to

19   the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). On

20   October 19, 2020, the undersigned issued an order to show cause as to why this action should not

21   be dismissed for lack of prosecution after no defendant appeared in this action and plaintiff failed

22   to file proper proof of service. (ECF No. 9.) Plaintiff was ordered to show cause in writing

23   within twenty-eight days. The twenty-eight-day period has passed, and plaintiff has not

24   responded in any manner.

25   **ANALYSIS**

26   The factors to be weighed in determining whether to dismiss a case for lack of prosecution

27   are as follows: (1) the public interest in expeditious resolution of litigation; (2) the court's need

28   to manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring

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1 disposition on the merits; and (5) the availability of less drastic sanctions. <u>Hernandez v. City of</u>

2 <u>El Monte</u>, 138 F.3d 393, 398 (9th Cir. 1998); <u>Ferdik v. Bonzelet</u>, 963 F.2d 1258, 1260 (9th Cir.

3 1992); <u>Carey v. King</u>, 856 F.2d 1439, 1440 (9th Cir. 1988). Dismissal is a harsh penalty that

4 should be imposed only in extreme circumstances. <u>Hernandez</u>, 138 F.3d at 398; <u>Ferdik</u>, 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. <u>Id.</u>

13   Here, plaintiff failed to comply with an order of this court. Plaintiff was given an

14 opportunity to demonstrate an intent to prosecute this action and has failed to do so. In this

15 regard, plaintiff's lack of prosecution of this case renders the imposition of monetary sanctions

16 futile. Moreover, the public interest in expeditious resolution of litigation, the court's need to

17 manage its docket, and the risk of prejudice to the defendant all support the imposition of the

18 sanction of dismissal. Only the public policy favoring disposition on the merits counsels against

19 dismissal. However, plaintiff's failure to prosecute the action in any way makes disposition on

20 the merits an impossibility. The undersigned will therefore recommend that this action be

21 dismissed due to plaintiff's failure to prosecute as well as plaintiff's failure to comply with the

22 Court's orders. <u>See</u> Fed. R. Civ. P. 41(b).

23   Accordingly, IT IS HEREBY RECOMMENDED that:

24   1. Plaintiff's December 5, 2019 complaint (ECF No. 1) be dismissed without prejudice;

25 and

26   2. This action be closed.

27   These findings and recommendations will be submitted to the United States District Judge

28 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 6, 2020

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DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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DB/orders/orders.pro se/hamidi2434.dlop.f&rs

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