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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	CHRISTOPHER KERSHNER,	No. 2:20-cv-1047 DAD DB PS
12	Plaintiff,	
13	v.	ORDER AND
14	JOSHUA EAGAN, et al.,	FINDINGS AND RECOMMENDATIONS
15	Defendants.	
16		
17	Plaintiff Christopher Kershner is proceeding in this action pro se. This matter was	
18	referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).	
19	On July 25, 2022, the court issued an order setting this matter for a Status (Pretrial Scheduling)	
20	Conference before the undersigned on August 26, 2022. (ECF No. 29.) Pursuant to that order,	
21	plaintiff was to file a status report on or before August 12, 2022. Plaintiff, however, failed to file	
22	the required status report.	
23	Accordingly, on August 19, 2022, the court issued an order to show cause, ordering	
24	plaintiff to show cause in writing within fourteen days as to why this action should not be	
25	dismissed for lack of prosecution. Plaintiff was warned that the failure to timely comply with that	
26	order could result in a recommendation that this case be dismissed. (Id. at 2.) Nonetheless, the	
27	time provided plaintiff has expired and plaintiff has not responded to the August 19, 2022 order.	
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Moreover, on July 12, 2022, defendants filed a motion to compel and noticed the motion for hearing before the undersigned on September 16, 2022. (ECF No. 28.) On September 2, 2022, defendants filed a statement in support of the motion. (ECF No. 34.) According to defendants' statement, plaintiff has not responded to defendants' attempts to communicate. (Id. at 2.)

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

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

Here, plaintiff has failed to respond to the July 25, 2022 order and has failed to communicate with defendants regarding the motion to compel. Plaintiff was warned that the failure to file a written response to that order could result in a recommendation that this matter be dismissed. In this regard, plaintiff's lack of prosecution of this case renders the imposition of monetary sanctions futile. Moreover, the public interest in expeditious resolution of litigation, the court's need to manage its docket, and the risk of prejudice to the defendant all support the imposition of the sanction of dismissal. Only the public policy favoring disposition on the merits

counsels against dismissal. However, plaintiff's failure to prosecute the action in any way makes 2 disposition on the merits an impossibility. The undersigned will therefore recommend that this 3 action be dismissed due to plaintiff's failure to prosecute as well as plaintiff's failure to comply 4 with the court's orders. See Fed. R. Civ. P. 41(b). 5 Accordingly, IT IS HEREBY ORDERED that: 6 1. Defendants' July 12, 2022 motion to compel (ECF No. 28) is denied without prejudice 7 to renewal¹: and 8 2. The September 16, 2022 hearing of defendants' motion is vacated. 9 Also, IT IS HEREBY RECOMMENDED that: 10 1. Plaintiff's May 7, 2022 amended complaint (ECF No. 4) be dismissed without prejudice; and 12 2. This action be closed. 13 These findings and recommendations are submitted to the United States District Judge 14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days 15 after being served with these findings and recommendations, any party may file written 16 objections with the court and serve a copy on all parties. Such a document should be captioned 17 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections 18 shall be served and filed within fourteen days after service of the objections. The parties are 19 advised that failure to file objections within the specified time may waive the right to appeal the 20 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). Dated: September 6, 2022 22 23 24 UNITED STATES MAGISTRATE JUDGE

DLB:6 25

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¹ In the event these findings and recommendations are not adopted in full defendants may renotice their motion to compel for hearing before the undersigned.