

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEYARRA DUNN,
Plaintiff,
v.
AMAZON SERVICES, LLC,
Defendant,

No. 2:22-cv-2236 DJC DB PS
ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff Keyarra Dunn 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 March 21, 2024, the undersigned issued an order setting this matter for a Status (Pretrial Scheduling) Conference. (ECF No. 18.) Pursuant to that order, plaintiff was to file a status report on or before April 19, 2024. Plaintiff, however, failed to file the required status report.

Accordingly, on April 29, 2024, the undersigned issued an order to show cause, ordering plaintiff to show cause in writing within fourteen days as to why this action should not be dismissed for lack of prosecution.¹ Plaintiff was warned that the failure to timely comply with that order could result in a recommendation that this case be dismissed. (Id. at 2.) Plaintiff was

¹ Plaintiff's copies of the March 21, 2024 and April 29, 2024 orders were returned as undeliverable. Pursuant to Local Rule 183(b) a plaintiff appearing pro se has a duty to keep the Court advised of his or her current address.

1 also ordered to file a status report on or before May 31, 2024. (Id.) The time provided plaintiff
2 has expired and plaintiff has not responded to the April 29, 2024 order.

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 to
6 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 has failed to respond to multiple orders of the court.² Plaintiff was warned
20 that the failure to file a written response could result in a recommendation that this matter be
21 dismissed. In this regard, plaintiff’s lack of prosecution of this case renders the imposition of
22 monetary sanctions futile. Moreover, the public interest in expeditious resolution of litigation, the
23 court’s need to manage its docket, and the risk of prejudice to the defendant all support the
24 imposition of the sanction of dismissal. Only the public policy favoring disposition on the merits
25 counsels 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

28 ² Plaintiff has also failed to keep the Court advised of his or her current address.

1 action be dismissed due to plaintiff's failure to prosecute as well as plaintiff's failure to comply
2 with the Court's orders. See Fed. R. Civ. P. 41(b).

3 Accordingly, IT IS HEREBY ORDERED that the June 14, 2024 Status (Pretrial
4 Scheduling) Conference is vacated.

5 Also, IT IS HEREBY RECOMMENDED that:

6 1. Plaintiff's complaint filed November 18, 2022 (ECF No. 1) be dismissed without
7 prejudice; and

8 2. This action be closed.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
14 shall be served and filed within fourteen days after service of the objections. The parties are
15 advised that failure to file objections within the specified time may waive the right to appeal the
16 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: June 10, 2024

18
19
20 
21 DEBORAH BARNES
22 UNITED STATES MAGISTRATE JUDGE
23
24

25 DLB:6
26 DB/orders/orders.pro se/dunn2236.dlop.f&rs
27
28