

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

STEVEN MICHAEL GOLDSTEIN,
Plaintiff,
v.
NANCY A. BERRYHILL,¹
Defendants.

Case No. [5:13-cv-03504-HRL](#)

**ORDER RE MOTION FOR WRIT OF
MANDAMUS**

Re: Dkt. Nos. 67, 68, 69

In this action, plaintiff appeals the Commissioner’s decision denying his claim for survivor benefits. The matter was remanded pursuant to 42 U.S.C. § 405(g), sentence six.

Plaintiff moves to amend his complaint to assert a claim for mandamus directing the Commissioner to pay him the claimed survivor benefits, without any reductions. Additionally, he seeks sanctions against defendant on the ground that the remand proceedings are not complete. Insofar as plaintiff seeks mandamus on the ultimate issue of his claimed entitlement to benefits, his motion is denied. It is not apparent that the question of plaintiff’s entitlement to benefits is a matter falling within the Commissioner’s nondiscretionary duty, and § 405(g) is the exclusive remedy available. Hironymous v. Bowen, 800 F.2d 888 (9th Cir. 1986). As for the status of the remand proceedings, the extraordinary remedy of mandamus (or an amended pleading) is

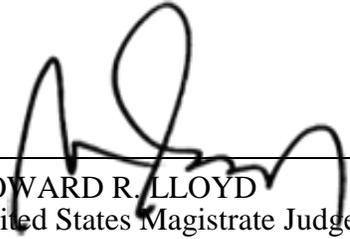
¹ Nancy A. Berryhill is automatically substituted for Carolyn Colvin as the defendant in this suit. Fed. R. Civ. P. 25(d).

1 unnecessary, inasmuch as plaintiff may seek (as he has done through the present motion) to
2 enforce what he believes was required under the court's prior April 17, 2015 order. On this
3 record, it is unclear whether a finding of contempt or sanctions are warranted. The court sets a
4 status conference for March 21, 2017, 1:30 p.m. to discuss the matter.

5 SO ORDERED.

6 Dated: March 8, 2017

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HOWARD R. LLOYD
United States Magistrate Judge