

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JASON HU,  
Plaintiff,  
v.  
THE GUARDIAN LIFE INSURANCE  
COMPANY OF AMERICA,  
Defendant.

Case No. 17-CV-04098-LHK  
**ORDER DECLINING TO ADOPT  
REPORT AND RECOMMENDATION  
TO DISMISS FOR FAILURE TO  
PROSECUTE**  
Re: Dkt. No. 10

The instant case was removed to this Court from Santa Clara County Superior Court on July 20, 2017. ECF No. 1. On August 11, 2017, Magistrate Judge Nathanael Cousins ordered Plaintiff to show cause by August 25, 2017 why Plaintiff’s action should not be dismissed for failure to prosecute based on Plaintiff’s failure to “appear[] since the case was removed from state court.” ECF No. 9 at 1. Plaintiff did not respond to the order to show cause by the August 25, 2017 deadline. Because Plaintiff did not consent to Magistrate Judge jurisdiction, Judge Cousins filed a report and recommendation on August 28, 2017 recommending that the District Court dismiss Plaintiff’s case for failure to prosecute unless Plaintiff “demonstrates an interest in pursuing his case.” ECF No. 10 at 1. On August 29, 2017, the instant case was reassigned to the

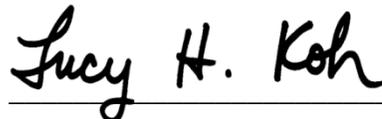
1 undersigned judge. ECF No. 11.

2 On September 7, 2017, within the 14-day period for Plaintiff to file objections to the report  
3 and recommendation, Plaintiff filed a letter responding to the report and recommendation. ECF  
4 No. 13. In the letter, Plaintiff also asked the Court not to dismiss his case and stated that Plaintiff  
5 could not respond to Judge Cousins’s August 11, 2017 order to show cause by the August 25,  
6 2017 deadline because Plaintiff did not receive the order to show cause until August 30, 2017. *Id.*

7 Thus, in his September 7, 2017 letter, Plaintiff has both showed cause why Plaintiff could  
8 not respond to Judge Cousins’s order to show cause and “demonstrate[d] an interest in pursuing  
9 his case.” ECF No. 10, at 1; ECF No. 13. As a result, the Court finds that dismissal for failure to  
10 prosecute is not warranted at this time. The Court therefore declines to adopt the recommendation  
11 to dismiss Plaintiff’s case for failure to prosecute. However, if Plaintiff does not diligently  
12 prosecute his case in the future, the Court may dismiss the instant case for failure to prosecute.

13 **IT IS SO ORDERED.**

14  
15 Dated: September 12, 2017



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17 LUCY H. KOH  
18 United States District Judge