

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

FRANK WEBB JR.,)	CIVIL 16-00233 LEK-RLP
)	
Plaintiff,)	
)	
vs.)	
)	
NANCY A. BERRYHILL, Acting)	
Commissioner of Social)	
Security,)	
)	
Defendant.)	
_____)	

**ORDER DISMISSING PLAINTIFF’S CLAIMS WITH PREJUDICE
AND DIRECTING THAT THE CASE BE CLOSED**

A Judgment in a Civil Case (“Judgment”) was entered on June 14, 2017. [Dkt. no. 19.] On June 19, 2017, pro se Plaintiff Frank Webb Jr. (“Plaintiff”) filed a document that was construed as a motion for relief pursuant to Fed. R. Civ. P. 60. [Dkt. nos. 20 (motion), 21 (entering order construing motion).] On August 16, 2017, this Court issued the Order Granting Plaintiff’s Motion for Relief Pursuant to Fed. R. Civ. P. 60 (“8/16/17 Order”). [Dkt. no. 23.] The 8/16/17 Order granted Plaintiff’s motion and allowed him to file amended complaint asserting his 5 U.S.C. § 552a(d) claim, his intentional infliction of emotional distress claim (“IIED”), and his claim asserting a 42 U.S.C. § 405(g) appeal. [8/16/17 Order at 5.] This Court’s previous orders dismissing those claims with prejudice were set aside. [Id. at 7-8.] The 8/16/17 Order directed Plaintiff to file his amended complaint by October 10,

2017. [Id. at 8.]

Plaintiff has neither filed his amended complaint nor requested an extension of the deadline to file his amended complaint. This Court FINDS that Plaintiff has abandoned this case. Because Plaintiff has abandoned this case and failed to comply with the 8/16/17 Order, this Court has the discretion to dismiss his claims with prejudice. See Yourish v. Cal. Amplifier, 191 F.3d 983, 988 (9th Cir. 1999) (holding that the plaintiff's failure to comply with a minute order setting forth the deadline to file the amended complaint gave the district court the discretion to dismiss the case under Fed. R. Civ. P. 41(b)).¹ After weighing the five dismissal factors set forth in Dreith v. Nu Image, Inc., 648 F.3d 779, 788 (9th Cir. 2011),² this Court finds that the public interest in the expeditious resolution of this litigation and this Court's interest in

¹ Fed. R. Civ. P. 41(b) states, in pertinent part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it."

² The Ninth Circuit has

identified five factors that a district court must consider before dismissing a case . . . : (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the other party; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions.

Dreith, 648 F.3d at 788 (citations and quotation marks omitted).

managing the docket strongly outweigh the policy favoring disposition of cases on the merits. Moreover, Defendant Nancy A. Berryhill, Acting Commissioner of Social Security ("Defendant"), will not be prejudiced by dismissal because there have been minimal filings and proceedings on the merits of Plaintiff's claims, and there are no less drastic alternatives available at this time.

Plaintiff's § 552a(d) claim, his IIED claim, and his claim asserting a § 405(g) appeal are HEREBY DISMISSED WITH PREJUDICE. There being no remaining claims in this case, this Court DIRECTS the Clerk's Office to enter judgment in favor of Defendant and close the case immediately.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, October 17, 2017.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

FRANK WEBB JR. VS. NANCY A. BERRYHILL, ACTING DIRECTOR OF SOCIAL SECURITY; CIVIL 16-00233 LEK-RLP; ORDER DISMISSING PLAINTIFF'S CLAIMS WITH PREJUDICE AND DIRECTING THAT THE CASE BE CLOSED