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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JAMES PATRICK SCHUETZE,)	Case No. CV 05-6031 DDP(JC)
Plaintiff,)	MEMORANDUM OPINION AND
v.)	ORDER DISMISSING ACTION
ORANGE COUNTY SOCIAL)	
SERVICES AGENCY, et al.,)	
Defendants.)	

On February 16, 2011, plaintiff James Patrick Schuetze (“plaintiff”), who is at liberty, is proceeding *pro se* and has been granted leave to proceed *in forma pauperis*, filed the operative Second Amended Civil Rights Complaint (“Second Amended Complaint” or “SAC”). On May 3, 2012, after screening the Second Amended Complaint under 28 U.S.C. § 1915(e)(2), the Magistrate Judge dismissed the Second Amended Complaint with leave to amend. In the May 3, 2012 Order and again in a May 30, 2012 Order extending plaintiff’s deadline to file a Third Amended Complaint, the Magistrate Judge further cautioned plaintiff that the failure timely to file a Third Amended Complaint would subject this action to dismissal for failure to prosecute. Plaintiff’s deadline to file a Third Amended Complaint was June 17, 2012, but to date, he has not done so.

1 Courts may dismiss lawsuits that are not diligently prosecuted. See Link v.
2 Wabash R.R., 370 U.S. 626, 629-30 (1962); Carey v. King, 856 F.2d 1439, 1440
3 (9th Cir. 1988) (per curiam). In determining whether to dismiss a *pro se* plaintiff's
4 action for failure to prosecute, a court must consider: (1) the public's interest in
5 expeditious resolution of litigation; (2) the court's need to manage its docket;
6 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition
7 of cases on their merits; and (5) the availability of less drastic alternatives. Carey,
8 856 F.2d at 1440. Unreasonable delay creates a rebuttable presumption of prejudice
9 to the defendants that can be overcome only with an affirmative showing of just
10 cause by the plaintiff. In re Eisen, 31 F.3d 1447, 1452-53 (9th Cir. 1994).

11 Here, the first, second, third, and fifth Carey factors militate in favor of
12 dismissal. Plaintiff's claims concern events that happened several years ago and
13 thus are already somewhat stale. Further delay would only make it more difficult
14 for defendants – some of whom plaintiff named for the first time in the Second
15 Amended Complaint and have not yet been served – to mount a defense. There also
16 does not appear to be any less drastic sanction the Court can take, as plaintiff has
17 not availed himself of the opportunity to file a Third Amended Complaint, even
18 after being expressly warned that if he failed to do so, his lawsuit might be
19 dismissed. Although the fourth factor weighs against dismissal – as it does in every
20 case – the other factors together outweigh the public's interest in disposing of the
21 case on its merits.

22 Accordingly, it is ORDERED that this action be dismissed for lack of
23 prosecution.

24 DATED: __July 6, 2012__

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27 HONORABLE DEAN D. PREGERSON
28 UNITED STATES DISTRICT JUDGE