

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

QUETZAL CONTRERAZ,)	1:04-cv-06039-LJO-GSA-PC
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS TO
)	DISMISS CASE FOR FAILURE TO
vs.)	PROSECUTE
)	(Doc. 51.)
D. ADAMS, et al.,)	
)	OBJECTIONS, IF ANY, DUE IN THIRTY
Defendants.)	DAYS
_____)	

Quetzal Contreras (“Plaintiff”) is a prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On May 17, 2010, Defendant Adams filed a motion to dismiss this action. (Doc. 44.) Plaintiff’s opposition was due within twenty-one days. Local Rule 230. On July 14, 2010, Plaintiff requested an extension of time, which was granted on July 16, 2010. (Docs. 45, 46.) On October 6, 2010, the Court granted Plaintiff another extension of time for forty-five days. (Doc. 51.) The forty-five day period has now expired, and Plaintiff has not file an opposition or requested another extension of time.

In determining whether to dismiss this action for failure to comply with the directives set forth in its order, “the Court must weigh the following factors: (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 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring

1 disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (citing
2 Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

3 “The public’s interest in expeditious resolution of litigation always favors dismissal,” id.
4 (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the action has
5 been pending for more than six years. Plaintiff’s failure to respond to the Court’s order may reflect
6 Plaintiff’s disinterest in prosecuting this case. In such an instance, the Court cannot continue to expend
7 its scarce resources assisting a litigant who will not help himself by defending his case against a motion
8 to dismiss. Thus, both the first and second factors weigh in favor of dismissal.

9 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in and of
10 itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently increases the risk
11 that witnesses’ memories will fade and evidence will become stale,” id., and it is Plaintiff’s failure to
12 prosecute his case that is causing delay. Therefore, the third factor weighs in favor of dismissal.

13 As for the availability of lesser sanctions, at this stage in the proceedings there is little available
14 to the Court which would constitute a satisfactory lesser sanction while protecting the Court from further
15 unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this action,
16 making monetary sanctions of little use, and given the early stage of these proceedings, the preclusion
17 of evidence or witnesses is not available. However, inasmuch as the dismissal being considered in this
18 case is without prejudice, the Court is stopping short of issuing the harshest possible sanction of
19 dismissal with prejudice.

20 Finally, because public policy favors disposition on the merits, this factor will always weigh
21 against dismissal. Id. at 643.

22 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based on
23 Plaintiff’s failure to prosecute this action.

24 These findings and recommendations are submitted to the United States District Judge assigned
25 to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being
26 served with these findings and recommendations, Plaintiff may file written objections with the court.
27 Such a document should be captioned "Objections to Magistrate Judge's Findings and
28

1 Recommendations." Plaintiff is advised that failure to file objections within the specified time may
2 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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

IT IS SO ORDERED.

Dated: December 10, 2010

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE