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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EDWIN MARRERO,	1:10-cv-00509-LJO-GSA-PC	
Plaintiff,		FINDINGS AND RECOMMENDATIONS,
v.		RECOMMENDING THAT THIS ACTION BE
		DISMISSED FOR PLAINTIFF'S FAILURE TO
VAN A. ROSE, et al.,		OBEY A COURT ORDER
		(Doc. 36.)
Defendants.		OBJECTIONS, IF ANY, DUE IN THIRTY
		DAYS

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Edwin Marrero ("Plaintiff"), a federal prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to Bivens v. Six Unknown Agents, 42 U.S. 388 (1971) on March 22, 2010. (Doc. 1.) The Court screened the Complaint pursuant to 28 U.S.C. § 1915A and issued an order on December 8, 2011. dismissing Plaintiff's Complaint for failure to state a claim, with leave to amend. (Doc. 28.) On March 12, 2012, Plaintiff filed the First Amended Complaint. (Doc. 34.) The Court screened the First Amended Complaint and issued an order on June 29, 2012, dismissing the First Amended Complaint for failure to comply with Local Rule 220, with leave to file a Second Amended Complaint within thirty days. (Doc. 36.) Plaintiff has been granted two thirty-day extensions of time to file the Second Amended Complaint. (Docs. 38, 40.) The deadlines have expired, and Plaintiff has not complied with the Court's order 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

1 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
2 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public
3 policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th
4 Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

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

12 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in and
13 of itself to warrant dismissal.” Id. (citing Yourish at 991). However, “delay inherently increases the
14 risk that witnesses’ memories will fade and evidence will become stale,” id., and it is Plaintiff’s
15 failure to follow Local Rules in the first instance and to respond to the Court’s order in the second
16 instance that is causing delay. Therefore, the third factor weighs in favor of dismissal.

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

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

26 Accordingly, the court HEREBY RECOMMENDS that this action be dismissed based on
27 Plaintiff’s failure to obey the court’s order of June 29, 2012.

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