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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JORGE VILLATORO,

Plaintiff,

v.

JERRY BROWN, et al.,

Defendants.

CASE NO. 1:11-cv-00971-GBC (PC)

ORDER DISMISSING ACTION, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF MAY BE
GRANTED AND FOR FAILURE TO
PROSECUTE

On May 27, 2011, Plaintiff Jorge Villatoro (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. Doc. 1.

On August 10, 2012, the Court issued a screening order, dismissing Plaintiff’s complaint, with leave to amend, for failure to state a claim upon which relief may be granted. Doc. 14. On September 12, 2012, Plaintiff filed a motion for extension of time to file an amended complaint, stating he needs more time to obtain the status and completion of the medical 602 inmate appeal pertaining to the current litigation. *See* Mot. Ext. File Am. Compl. at 1, Doc. 15.

On November 16, 2012, the Court granted Plaintiff’s motion for a thirty (30) day extension of time to file a first amended complaint. Doc. 18. To date, Plaintiff has not complied with the Court’s order or requested a further extension of time.

“In determining whether to dismiss an action for lack of prosecution, the district court is required to consider several 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 the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic

1 sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (quoting *Henderson v. Duncan*, 779
2 F.2d 1421, 1423 (9th Cir. 1986)). These factors guide a court in deciding what to do, and are not
3 conditions that must be met in order for a court to take action. *In re Phenylpropanolamine (PPA)*
4 *Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006).

5 In this instance, Plaintiff has not complied with or otherwise responded to the Court’s orders.
6 As a result, there is no pleading on file that sets forth any claims upon which relief may be granted
7 under § 1983. Accordingly, pursuant to 28 U.S.C. §§ 1915A and 1915(e), this action be HEREBY
8 DISMISSED, with prejudice, based on Plaintiff’s failure to state any claims upon which relief may
9 be granted under § 1983 and for failure to prosecute.

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12 IT IS SO ORDERED.

13 Dated: December 21, 2012


14 UNITED STATES MAGISTRATE JUDGE