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2  
3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF CALIFORNIA

5 LEIOKO D. ROMERO,

6 Plaintiff,

7 v.

8 TUOLUMNE COUNTY JAIL and  
9 MCCAIG,

10 Defendants.

1:15-cv-01590-AWI-EPG (PC)

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT THE CASE BE  
DISMISSED, WITH PREJUDICE, FOR  
FAILURE TO STATE A CLAIM AND  
FAILURE TO COMPLY WITH A COURT  
ORDER  
(ECF NOS. 1 & 7)

ORDER DIRECTING CLERK TO SEND A  
COPY OF ORDER TO PLAINTIFF AT  
ADDITIONAL ADDRESS

OBJECTIONS, IF ANY, DUE IN THIRTY  
DAYS

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14  
15 Leioko Romero (“Plaintiff”) is a prisoner proceeding *pro se* and *in forma pauperis* in  
16 this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing  
17 this action on October 19, 2015. (ECF No. 1). On November 30, 2016, the Court screened  
18 Plaintiff’s Complaint and found that it failed to state a claim. (ECF No. 7). The Court gave  
19 Plaintiff thirty days from the date of service of the order to file an amended complaint or to  
20 notify the Court that she wishes to stand on her Complaint, subject to findings and  
21 recommendations to the district judge consistent with the screening order. (*Id.*). The Court  
22 also warned Plaintiff that failure to file an amended complaint or to notify the Court that she  
23 wishes to stand on the Complaint would result in the dismissal of her case. (*Id.* at pgs. 9-10).

24 The time period expired, and Plaintiff did not file an amended complaint or notify the  
25 Court that she wishes to stand on her Complaint. Additionally, Plaintiff failed to keep the  
26 Court and opposing parties informed of her current address, as required by Local Rule 183(b)  
27 and the First Informational Order in Prisoner/Civil Detainee Civil Rights Case (ECF No. 3, p.  
28 5).

1           Accordingly, the Court will recommend that Plaintiff’s case be dismissed for failure to  
2 state a claim and failure to comply with a court order.

3           “In determining whether to dismiss a[n] [action] for failure to prosecute or failure to  
4 comply with a court order, the Court must weigh the following factors: (1) the public’s interest  
5 in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
6 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
7 public policy favoring disposition of cases on their merits.” Pagtalunan v. Galaza, 291 F.3d  
8 639, 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

9           ““The public’s interest in expeditious resolution of litigation always favors dismissal.””  
10 Id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)). This case has  
11 been pending for over a year and four months, and it has been over two months since Plaintiff  
12 was ordered to file an amended complaint or notify the Court that she wishes to stand on her  
13 Complaint. Accordingly, this factor weighs in favor of dismissal.

14           Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in  
15 and of itself to warrant dismissal.” Pagtalunan, 291 F.3d at 642 (citing Yourish v. California  
16 Amplifier, 191 F.3d 983, 991 (9th Cir. 1999)). However, “delay inherently increases the risk  
17 that witnesses’ memories will fade and evidence will become stale,” id. at 643, and it is  
18 Plaintiff’s failure to file an amended complaint or to notify the Court that she wishes to stand on  
19 her Complaint that is causing delay. The Court found that Plaintiff’s Complaint failed to state a  
20 claim over two months ago. The case is now stalled until Plaintiff files an amended complaint  
21 or notifies the Court that she wishes to stand on her Complaint. Therefore, the third factor  
22 weighs in favor of dismissal.

23           As for the availability of lesser sanctions, at this stage in the proceedings there is little  
24 available to the Court which would constitute a satisfactory lesser sanction while protecting the  
25 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions are of  
26 little use, considering Plaintiff’s incarceration and *in forma pauperis* status, and given the stage  
27 of these proceedings, the preclusion of evidence or witnesses is not available. While dismissal  
28 is a harsh sanction, the Court has already found that Plaintiff’s complaint failed to state a claim.

1 Finally, because public policy favors disposition on the merits, this factor weighs  
2 against dismissal. Id. at 643.

3 Accordingly, the Court HEREBY RECOMMENDS that:

- 4 1. Pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e)(2)(B)(ii) this action be  
5 DISMISSED based on Plaintiff's failure to state a claim upon which relief may  
6 be granted under § 1983, as well as Plaintiff's failure to comply with a Court  
7 order;
- 8 2. This dismissal be subject to the "three-strikes" provision set forth in 28 U.S.C.  
9 § 1915(g). Coleman v. Tollefson, 135 S. Ct. 1759, 1763 (2015); and
- 10 3. The Clerk of Court be directed to close this case.

11 These findings and recommendations are submitted to the district judge assigned to the  
12 case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days after being  
13 served with these findings and recommendations, Plaintiff may file written objections with the  
14 court. Such a document should be captioned "Objections to Magistrate Judge's Findings and  
15 Recommendations." Plaintiff is advised that failure to file objections within the specified time  
16 may waive the right to appeal the district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
17 Cir. 1991).

18 Additionally, IT IS ORDERED that, in addition to the address listed for Plaintiff on the  
19 docket, the Clerk of Court is directed to send a copy of this order to: Leioko D. Romero,  
20 WF5997, Central California Women's Facility, P.O. Box 1508, Chowchilla, CA 93610.

21 IT IS SO ORDERED.

22  
23 Dated: February 28, 2017

/s/ Eric P. Gray  
24 UNITED STATES MAGISTRATE JUDGE