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

LAWRENCE BIRKS,

Plaintiff,

No. CIV S-07-1473 LKK DAD P

vs.

ROBERT SANTOS,

Defendant.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

On July 20, 2010, plaintiff's complaint was dismissed and he was granted sixty days within which to file an amended complaint. Plaintiff was also cautioned at that time that the failure to do so would result in a recommendation that this action be dismissed. In addition, plaintiff was firmly cautioned that no further extensions of time would be granted for this purpose. Now pending before the court is plaintiff's September 28, 2010 request for an extension of time to file an amended complaint.

Plaintiff has been given ample time and several opportunities to file an amended complaint in this action. Over two and a half years ago, on February 7, 2008, the court dismissed plaintiff's original complaint and granted him leave to file an amended complaint. Since that time the court has granted plaintiff an extraordinary six extensions of time to do so to no avail. Most recently, as noted above, the court granted plaintiff a final sixty days to file an amended

1 complaint and explicitly cautioned plaintiff that no further extensions of time would be granted
2 for this purpose. Nevertheless, plaintiff has once again demonstrated his inability to comply with
3 the court's orders by failing to file an amended complaint. Given this record, the public's
4 interest in expeditious resolution of litigation, the court's own need to manage its own docket,
5 the risk of prejudice to the defendant and the lack of any less drastic alternative here outweigh
6 the public policy in favor of disposing of cases on their merits. See Ferdik v. Bonzelet, 963 F.2d
7 1258, 1260-63(9th Cir. 1992) (affirming dismissal of pro se plaintiff's complaint due to his
8 failure to comply with the district court's order to file an amended complaint); see also Edwards
9 v. Marin Park, Inc., 356 F.3d 1058, 1065 (9th Cir. 2004) ("The failure of the plaintiff eventually
10 to respond to the court's ultimatum - either by amending the complaint or by indicating to the
11 court that [he] will not do so - is properly met with the sanction of a Rule 41(b) dismissal.").

12 Accordingly, IT IS HEREBY ORDERED that plaintiff's September 28, 2010
13 request for an extension of time to file an amended complaint (Doc. No. 41) is denied.

14 Also, IT IS HEREBY RECOMMENDED that this action be dismissed without
15 prejudice. See Fed. R. Civ. P. 41(b).

16 These findings and recommendations are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
18 one days after being served with these findings and recommendations, plaintiff may file written
19 objections with the court. The document should be captioned "Objections to Magistrate Judge's
20 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
21 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
22 F.2d 1153 (9th Cir. 1991).

23 DATED: October 5, 2010.

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25
26 DAD:sj
birk1473.fta(2)



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE