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

ANDREW CLIFF JOHNSON)	No. 08-cv-00462-SPK
Plaintiff,)	
v.)	
STATE OF CALIFORNIA, ET AL.,)	
Defendants.)	

ORDER DISMISSING ACTION

Plaintiff Andrew Johnson has filed three successive complaints in this action. On October 14, 2008, a United States Magistrate Judge dismissed the second amended complaint for several reasons. The Magistrate Judge, however, granted Plaintiff thirty days leave to file a third-amended complaint to attempt to state a claim. Plaintiff was notified that a failure to file an amended complaint could lead to a dismissal of the action.

It has now been over six months since the second amended complaint was dismissed with leave to amend to file a third-amended complaint. No such third-amended complaint has been filed. It has been over five months since the deadline passed for filing a third-amended complaint. The Court therefore concludes that the action should be dismissed with prejudice for failure to prosecute and for failure to follow a court order.

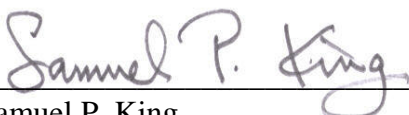
1 The Court weighs several factors in deciding whether to dismiss for failure
2 to prosecute. See Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002). The
3 Court considers: “(1) the public's interest in expeditious resolution of litigation; (2)
4 the court's need to manage its docket; (3) the risk of prejudice to
5 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
6 public policy favoring disposition of cases on their merits.”

7 In Pagtalunan, the Ninth Circuit reasoned that a four month period of no
8 activity weighed in favor of dismissal. Id. Here, it has been six months. The other
9 factors favor dismissal as well. As the Magistrate Judge recognized in the October
10 14, 2008 order, Plaintiff has submitted over forty filings, many of which were
11 deemed frivolous. The risk of prejudice is minimal. There are no less drastic
12 alternatives, as the Plaintiff has filed three previous complaints. “The public's
13 interest in expeditious resolution of litigation always favors dismissal.” Id.
14 (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir.1999)).

15 Accordingly, this action is DISMISSED with prejudice. Judgment shall
16 enter in favor of Defendants.

17 IT IS SO ORDERED.

18 DATED: April 20, 2009.

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22 Samuel P. King
23 Senior United States District Judge
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