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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MAYNARD EDRALIN BUMAGAT, et al.,

Plaintiffs,

v.

TERRY SHILLINGER, et al.,

Defendants.

No. 2:17-cv-02008-TLN-GGH

ORDER

Plaintiff Maynard Edralin Bumagat¹ sues pro se and in forma pauperis in this action. Before this Court are the findings and recommendations of the magistrate judge recommending dismissal of this action pursuant to Federal Rule of Civil Procedure (“Rule”) 41(b). (ECF No. 40.) Plaintiff filed objections to the findings and recommendations (ECF No. 51), and a subsequent Motion to Amend the Fourth Amended Complaint. (ECF No. 52.)

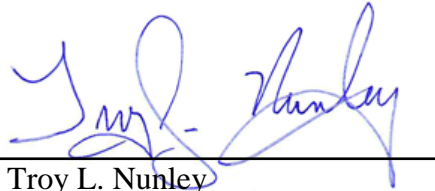
Upon review of the findings and recommendations, the Court finds that dismissal with prejudice under Rule 41(b) is not appropriate. The Court recognizes it has been a year since the commencement of this action and that Plaintiff has failed to appear on one occasion and failed to

¹ In an Order issued October 10, 2017, Plaintiff Bumagat was directed to eliminate a second named Plaintiff, Lorna Monsalud, from all further filings unless she took steps to acquire in forma pauperis status noting that she was identified to be a minor and would require representation to go forward. (ECF No. 3.) She has not appeared in any of the follow-on filings by Plaintiff Bumagat.

1 respond to the motion to dismiss pending before the Court. However, these two instances do not
2 justify the sever remedy of dismissal under Rule 41(b) with prejudice. In light of Plaintiff's
3 failure to respond to the motion to dismiss, there are other avenues the magistrate judge may take
4 in recommending dismissal, but Rule 41(b) is not a suitable avenue. Accordingly, the Court
5 hereby DECLINES to adopt the findings and recommendations (ECF No. 50). This matter is
6 referred back to the magistrate judge for a determination on the merits of the motion to dismiss
7 and if necessary the motion to amend filed after the findings and recommendations.

8 IT IS SO ORDERED.

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10 Dated: September 27, 2018

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14 Troy L. Nunley
15 United States District Judge
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