

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERNESTO M. HEREDIA,
Plaintiff,
v.
ANA BOYD,
Defendant.

Case No.16-cv-04031-HRL

**ORDER OF DISMISSAL FOR FAILURE
TO PROSECUTE**

Re: Dkt. Nos. 23, 24

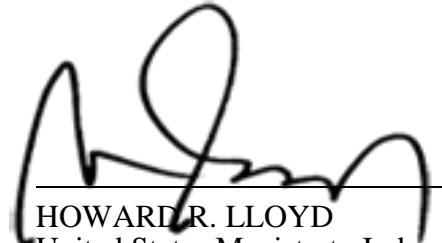
Pro se plaintiff Ernesto Heredia (“Heredia”) filed a complaint in this case on July 18, 2016. Dkt. No. 1. Since that date, defendants filed a motion to dismiss, which Heredia failed to oppose. Dkt. No. 9. The court granted the motion to dismiss with prejudice as to defendant Ana Boyd and with leave to amend as to defendant West Valley Staffing Group (“WVSG”). Dkt. No. 21. Heredia failed to file a First Amended Complaint, the deadline for which has passed. After Heredia also failed to file a Case Management Statement, Dkt. No. 22, the court issued an order to show cause why the case should not be dismissed for failure to prosecute on February 9, 2017. Dkt. No. 23. The show cause order set a hearing date of February 21, 2017, and stated, in bold text, “[i]f plaintiff fails to appear, the case will be dismissed for failure to prosecute.” *Id.* Heredia failed to appear at the show cause hearing. Dkt. No. 24. All parties have consented to magistrate judge jurisdiction. Dkt. Nos. 5, 16.

Having considered the five factors set forth in *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987), the court has determined that notwithstanding the public policy favoring the disposition of actions on their merits, the court's need to manage its docket and the public interest in the expeditious resolution of the litigation require dismissal of this action. In view of plaintiff's lack of response to this court's prior order(s), the court finds there is no

appropriate less drastic sanction. Accordingly, this action is dismissed pursuant to Fed. R. Civ. P. 41(b) for plaintiff's failure to prosecute. The Clerk is instructed to close the file in this matter.

IT IS SO ORDERED.

Dated: 2/21/2017



HOWARD R. LLOYD
United States Magistrate Judge