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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

NIKI-ALEXANDER SHETTY,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON, et  
al.,

Defendants.

Case No. 16-cv-05846-BLF

**ORDER DISMISSING ACTION WITH  
PREJUDICE**

On March 25, 2019, the Court dismissed Plaintiff’s second amended complaint (“SAC”) with leave to amend in part and without leave to amend in part. *See* Order Adopting Report and Recommendation in Part, ECF 94. Plaintiff was granted until April 15, 2019 to file a third amended complaint. *See id.*

On April 15, 2019, Plaintiff filed a motion to enlarge time to file an amended pleading, seeking a three-week extension of his filing deadline. *See* Ex Parte Motion to Enlarge Time by Three Weeks, ECF 95. The Court granted the request and directed Plaintiff to file any third amended complaint on or before May 6, 2019. *See* Order Granting Plaintiff’s Motion to Enlarge Time, ECF 96. The Court ordered that if Plaintiff elects not to amend, but to allow the Court’s Order Adopting Report and Recommendation in Part to ripen into a final, appealable order, he shall file a notice of such intent on or before May 6, 2019. *See id.*

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On May 6, 2019, Plaintiff’s counsel filed a declaration notifying the Court that he has sent Plaintiff several emails communicating the contents of the Court’s orders, and also has left multiple voice mail messages for Plaintiff. *See* Declaration of Gary Victor Dubin, ECF 97. Counsel represents that Plaintiff did not respond to any of these communications and that counsel interprets the lack of response to mean that Plaintiff does not intend to amend his pleading. *See id.*

Based on the representation of Plaintiff’s counsel, and Plaintiff’s failure to file an amended pleading, the Court **DISMISSES** the action on the merits and **WITH PREJUDICE** for the reasons set forth in the Court’s prior Order Adopting Report and Recommendation in Part.

**IT IS SO ORDERED.**

Dated: May 7, 2019

  
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BETH LABSON FREEMAN  
United States District Judge