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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 Anthony Nguyen,

12 Plaintiff,

13 v.

14 Audrey Presley,

15 Defendant.

Case No.: 16-cv-1782-JAH-AGS

**REPORT AND RECOMMENDATION
TO DISMISS FIRST AMENDED
COMPLAINT WITHOUT
PREJUDICE**

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17 After being warned his case could be dismissed for failure to prosecute, Anthony
18 Nguyen conceded he was unable to effectively prosecute his case, and requested that the
19 Court, among other possible remedies, “dismiss this case without prejudice[,] allowing
20 Plaintiff to refile when the circumstances permit prosecution.” (ECF No. 23, at 2.) Nguyen
21 can request his case’s dismissal without a court order so long as it is before an answer or a
22 summary judgment motion is filed. Fed. R. Civ. P. 41(a)(1); *Concha v. London*, 62 F.3d
23 1493, 1506 (9th Cir. 1995) (“Even if the defendant has filed a motion to dismiss, the
24 plaintiff may terminate his action voluntarily by filing a notice of dismissal under Rule
25 41(a)(1).”). As of the date of Nguyen’s request, July 5, 2017, he effectively dismissed his
26 case.

27 Moreover, Nguyen has still not responded to defendant’s motion to dismiss, despite
28 several opportunities. Failing to oppose a motion to dismiss is tantamount to consenting

1 to dismissal. *See* CivLR 7(f)(3)(c); *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995)
2 (holding that a district court may grant an unopposed motion to dismiss when a local rule
3 permits). Granting the unopposed motion to dismiss in this instance serves the public’s
4 interest in speedy resolution and the Court’s interest in managing its docket (given the
5 number of opportunities Nguyen was provided to respond), prevents prejudice to defendant
6 by foreclosing this suit until Nguyen is prepared to successfully and efficiently prosecute
7 it, and avoids the more drastic sanction of a dismissal without prejudice. *See Ghazali*, 46
8 F.3d at 53 (setting out the factors a Court must consider in granting an unopposed motion
9 to dismiss).

10 Thus, the Court recommends that:

- 11 (1) Defendant’s unopposed motion to dismiss the first amended complaint¹ (ECF
12 No. 17) be **GRANTED**, without prejudice;
13 (2) Plaintiff’s request to dismiss the case without prejudice (ECF No. 23) be
14 **GRANTED**; and
15 (3) The Clerk be directed to close this case.

16 Upon being served with a copy of this report, the parties have 14 days to file any
17 objections. Upon being served with any objections, the party receiving such objections has
18 14 days to file any response. *See* Fed. R. Civ. P. 72(b)(2).

19 Dated: July 18, 2017

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21 _____
22 Hon. Andrew G. Schopler
23 United States Magistrate Judge
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28 ¹ Nguyen entitled his amended complaint as a “Second Amended Complaint,” although it was his
first amendment. (ECF No. 12, at 1.) This Court refers to it here as the “first amended complaint.”