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

DAMON JONES,

Plaintiff,

vs.

1: 06 CV 01812 AWI YNP SMS (PC)

FINDINGS AND RECOMMENDATIONS

JAMES YATES, et al,

Defendants.

Plaintiff is a state prisoner proceeding pro sen and in forma pauperis in a civil rights action pursuant to 42 U.S.C. § 1983.

On August 18, 2009, Defendant filed a motion to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(6) on the ground that Plaintiff failed to state a claim upon which relief could be granted. Plaintiff failed to file opposition to the motion or a statement of non opposition. On October 9, 2009, a recommendation of dismissal was entered, recommending dismissal of this action for Plaintiff's failure file opposition to the motion. On December 23, 2009, an order was entered by the District Court, declining to adopt the findings and recommendations. The District Court noted that Plaintiff was not give proper notice of the motion to dismiss.

On January 5, 2010, an order to show cause was entered, advising Plaintiff that he is

1 required by local rule to respond to the August 18, 2009, motion to dismiss. The order to show
2 cause noted that Plaintiff failed to file a response to the motion to dismiss, or the October 9,
3 2009, recommendation of dismissal. Plaintiff was specifically advised that “It is within the
4 inherent power of the court to sua sponte dismiss a case for lack of prosecution.” Ash v.
5 Cvetkov, 739 F.2d 493, 496 (9th Cir. 1984). Plaintiff was ordered to show cause, within twenty
6 days, why this action should not be dismissed for his failure to prosecute.

7 On January 13, 2010, Plaintiff filed a form for consent to the exercise of magistrate judge
8 jurisdiction. The form indicates that counsel for Defendants declined magistrate judge
9 jurisdiction. The form includes Plaintiff’s signature, but does not in any way show cause why
10 this action should not be dismissed for Plaintiff’s failure to prosecute. Further, Plaintiff has yet
11 to file an opposition to the motion to dismiss.

12 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed, without
13 prejudice, for Plaintiff’s failure to prosecute.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty days
16 after being served with these findings and recommendations, any party may file written
17 objections with the court and serve a copy on all parties. Such a document should be captioned
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
19 shall be served and filed within ten days after service of the objections. The parties are advised
20 that failure to file objections within the specified time waives all objections to the judge’s
21 findings of fact. See Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998). Failure to file
22 objections within the specified time may waive the right to appeal the District Court’s order.
23 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

24 IT IS SO ORDERED.

25 **Dated:** January 27, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE