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

DEREK J. BLOODWORTH,

Plaintiff,

No. CIV S-09-3348 GEB EFB P

vs.

N. HAYWARD, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a former state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On August 23, 2011, defendants Bush, Hayward, Glensor, Johnson, Cox, Ostrom and Ebbitt filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Dckt. No. 21.

On June 23, 2011, the court advised plaintiff of the requirements for opposing a motion to dismiss and that failure to oppose such a motion might be deemed a waiver of opposition to the motion. Plaintiff failed to file an opposition.

On October 27, 2011, the court gave plaintiff thirty days to file an opposition or statement of non-opposition and warned him that failure to do so could result in a recommendation that this action be dismissed. *See* Fed. R. Civ. P. 41(b). The time for acting has passed and plaintiff has not filed an opposition, a statement of no opposition or otherwise responded to the court's order.

1 Plaintiff has been warned that he must file a response to defendants' motion. Plaintiff  
2 has disobeyed this court's orders. The appropriate sanction is dismissal without prejudice.

3 Accordingly, it is RECOMMENDED that this action be dismissed without prejudice.  
4 *See* Fed. R. Civ. P. 41(b).

5 These findings and recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
7 after being served with these findings and recommendations, any party may file written  
8 objections with the court and serve a copy on all parties. Such a document should be captioned  
9 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
10 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
11 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: January 4, 2012.

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14 EDMUND F. BRENNAN  
15 UNITED STATES MAGISTRATE JUDGE  
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