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

FERNANDO MILSAP,

Plaintiff,
vs.

No. 2:10-cv-2008 MCE EFB P

MATTHEW CATE, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On March 27, 2012, the district judge granted defendants’ motion to dismiss with leave to amend on the grounds that plaintiff failed to state a claim and because defendants were entitled to qualified immunity. Dckt. No. 32. Thereafter, plaintiff filed an amended complaint. Dckt. No. 36. On September 11, 2012, the undersigned dismissed the amended complaint for again, failing to state a claim. Dckt. No. 36. The court explained the complaint’s deficiencies, gave plaintiff 30 days to file an amended complaint correcting those deficiencies, and warned plaintiff that failure to file an amended complaint would result in a recommendation that this action be dismissed.

1 Despite being granted an extension of time, plaintiff has not filed an amended complaint
2 or otherwise complied with the court's order. A party's failure to comply with any order or with
3 the Local Rules "may be grounds for imposition by the Court of any and all sanctions authorized
4 by statute or Rule or within the inherent power of the Court." E.D. Cal. Local Rule 110. The
5 court may recommend that an action be dismissed with or without prejudice, as appropriate, if a
6 party disobeys an order or the Local Rules. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th
7 Cir. 1992) (district court did not abuse discretion in dismissing *pro se* plaintiff's complaint for
8 failing to obey an order to re-file an amended complaint to comply with Federal Rules of Civil
9 Procedure); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for *pro se*
10 plaintiff's failure to comply with local rule regarding notice of change of address affirmed).

11 Accordingly, it is hereby RECOMMENDED that this action be dismissed for failure to
12 state a claim and for failure to prosecute. 28 U.S.C. § 1915A; Fed. R. Civ. P. 41(b); E.D. Cal.
13 Local Rule 110.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen 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." Failure to file objections
19 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
20 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: November 15, 2012.

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24 EDMUND F. BRENNAN
25 UNITED STATES MAGISTRATE JUDGE
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