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

GUILLERMO MENDOZA,

Plaintiff,

No. 2:11-cv-3051 GEB EFB P

vs.

R. MIRANDA, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On August 27, 2012, defendants filed a motion to dismiss for failure to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). On October 4, 2012, the court gave plaintiff twenty-one 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.

Plaintiff has been warned that he must file a response to defendants’ motion. Plaintiff has disobeyed this court’s orders and failed to prosecute this action. The appropriate action is dismissal without prejudice.

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1 Accordingly, it is hereby RECOMMENDED that this action be dismissed without
2 prejudice. *See* Fed. R. Civ. P. 41(b); E.D. Cal. Local Rule 110, 183(b).

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

10 Dated: October 29, 2012.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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