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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PATRICK FLETCHER,
Plaintiff,
v.
GARY SWARTHOUT, et al.,
Defendants.

No. 2:14-cv-0567 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. In an order dated October 20, 2016, the undersigned granted defendants’ motion to dismiss and gave plaintiff twenty-one days to file a third amended complaint. (ECF No. 24.) Plaintiff was advised that if he chose not to file an amended complaint, the court would recommend that this case be dismissed with prejudice. (*Id.* at 11.)


On November 14, 2016, plaintiff filed a document entitled “Waiver of reply.” (ECF No. 25.) Plaintiff states that he submits “a motion for waiver of reply, in the interest of justice.” The undersigned construes plaintiff’s filing as a decision not to proceed with this action.

Accordingly, and for the reasons set forth in the court’s October 20, 2016 order, the undersigned **HEREBY RECOMMENDS** that this case be dismissed with prejudice.

Because all parties have not filed consents to magistrate judge jurisdiction, the Clerk of the Court is **ORDERED** to assign a district judge to this case.

1 These findings and recommendations will be submitted to the United States District Judge
2 to be assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
3 days after being served with these findings and recommendations, any party may file written
4 objections with the court and serve a copy on all parties. The document should be captioned
5 “Objections to Magistrate Judge's Findings and Recommendations.” Any response to the
6 objections shall be filed and served within seven days after service of the objections. The parties
7 are advised that failure to file objections within the specified time may result in waiver of the
8 right to appeal the district court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 Dated: November 29, 2016

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13 DEBORAH BARNES
14 UNITED STATES MAGISTRATE JUDGE
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