1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 DAVID MARSHALL, No. 2:16-cv-0650 MCE AC (PS) 12 Plaintiff. 13 ORDER AND FINDINGS AND v. **RECOMMENDATIONS** 14 SEAN ARMACHER, et al., 15 Defendants. 16 17 Plaintiff is proceeding in this action pro se. The action was accordingly referred to the 18 undersigned by E.D. Cal. R. 302(c)(21). 19 On August 12, 2016, defendant filed a motion to dismiss. ECF No. 4. Plaintiff failed to 20 respond to the motion. On September 2, 2016, the court ordered plaintiff to respond to the 21 dismissal motion no later than September 21, 2016, or suffer a recommendation that the action be 22 dismissed. ECF No. 5. Plaintiff has not responded to the dismissal motion or to the court's order. 23 Therefore, good cause appearing, IT IS HEREBY ORDERED that the October 5, 2016 24 hearing on defendant's motion to dismiss (ECF No. 4), is VACATED. 25 Further, IT IS HEREBY RECOMMENDED that this action be dismissed without 26 prejudice under Fed. R. Civ. P. 41(b), for plaintiff's failure to prosecute. 27 These findings and recommendations are submitted to the United States District Judge 28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days 1

1	after being served with these findings and recommendations, any party may file written
2	objections with the court. The document should be captioned "Objections to Magistrate Judge's
3	Findings and Recommendations." Any response to the objections shall be filed and served within
4	fourteen days after service of the objections. Failure to file objections within the specified time
5	may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
6	Cir. 1991).
7	DATED: September 29, 2016
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9	ALLISON CLAIRE UNITED STATES MAGISTRATE JUDGE
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