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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ELVIN JOHN CABRERA,  
Plaintiff,  
v.  
THOMAS M. MADDOCK, et al.,  
Defendants.

Case No. 1:10-cv-00611-LJO-MJS (PC)

**ORDER REQUIRING PLAINTIFF TO  
NOTIFY COURT OF HIS INTENT TO  
PROSECUTE ACTION**

**TWENTY-ONE (21) DAY DEADLINE**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 28 U.S.C. § 1983. The action proceeds on Plaintiff's Fourteenth Amendment Due Process claim against Defendants Gentry, Sanchez, Sigsten, Buechner, Jakabusky, and Kingston. (ECF No. 23.)

On December 28, 2015, Defendant filed a motion to dismiss for failure to state a claim. (ECF No. 28.) Plaintiff did not initially file an opposition or statement of non-opposition to Defendant's motion. The Court ordered Plaintiff to respond, but still Plaintiff failed to do so. (ECF No. 31.) Accordingly, the Court recommended that Plaintiff's action be dismissed for failure to obey a Court order and failure to prosecute. (ECF No. 32.) Plaintiff filed objections to the findings and recommendation, explaining why he previously did not respond and affirming his belief that his claims have merit.

1 (ECF No. 34.) At the same time, however, Plaintiff stated that he had received some  
2 degree of relief from the California Court of Appeals, did not wish to waste the Court's  
3 time, and "stipulate[d]" to the dismissal of his claims. (Id.)

4         Thereafter, Plaintiff filed an opposition to the motion to dismiss, opposing  
5 dismissal of the action. (ECF No. 35.) Although filed after Plaintiff's objections, the  
6 opposition is dated prior to the objections. Nonetheless, given Plaintiff's conflicting  
7 submissions, the Court cannot discern whether Plaintiff does, in fact, oppose dismissal  
8 of this action.

9         Defendant has not filed or served an answer in this action. Thus, if Plaintiff no  
10 longer wishes to pursue his claims, he may dismiss the action by filing a notice of  
11 voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). If Plaintiff  
12 wishes to proceed, the Court will require him to file an affirmative statement setting forth  
13 his intent to prosecute this action. Either way, Plaintiff must respond to this order within  
14 twenty-one (21) days. Failure to respond with either a notice of voluntary dismissal or a  
15 statement of intent to proceed will result in dismissal of the action, with prejudice, for  
16 failure to obey a court order and failure to prosecute.

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18 IT IS SO ORDERED.

19 Dated: March 28, 2016

20 /s/ Michael J. Seng  
21 UNITED STATES MAGISTRATE JUDGE  
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