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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MIGUEL G. SIFUENTES,  
Plaintiff,  
v.  
DR. OLA,  
Defendant.

No. 1:16-cv-00241-DAD-GSA (PC)

ORDER DECLINING TO ADOPT FINDINGS  
AND RECOMMENDATIONS

(Doc. No. 69)

Plaintiff Miguel G. Sifuentes is a state prisoner proceeding *pro se* in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 16, 2022, the assigned magistrate judge issued findings and recommendations recommending that this action be dismissed, with prejudice, due to plaintiff’s failure to obey a court order. (Doc. No. 69.) Specifically, because plaintiff did not comply with the Local Rules by timely filing an opposition or a statement of non-opposition to the motion for summary judgment that defendant filed on May 28, 2021 (Doc. No. 54), the assigned magistrate judge issued an order directing plaintiff to do so within thirty (30) days of entry of that order. (Doc. No. 58.) Instead, plaintiff filed a request for a 60-day extension of time to file an opposition to defendant’s motion, which the court granted on November 16, 2021. (Doc. Nos. 59, 61.) On January 21, 2022, plaintiff filed a second request for an extension of time—this time requesting

1 an extension of 30 days and attaching an incomplete draft of his opposition to “demonstrate his  
2 good faith effort.” (Doc. No. 63 at 8.) On February 1, 2022, the court granted plaintiff’s second  
3 request for an extension of time, finding good cause for “one final 30-day extension of time to  
4 complete and file his opposition.” (Doc. No. 64 at 3.) Plaintiff was warned that his “failure to  
5 comply with [that] order shall result in a recommendation that this case be dismissed.” (*Id.*)

6 Nevertheless, on February 24, 2022, plaintiff filed a third request for an extension of  
7 time—this time requesting an extension of 30 days because he allegedly had not been allowed to  
8 access the prison’s law library since January 14, 2022 due to an outbreak of COVID-19. (Doc.  
9 No. 65.) The assigned magistrate judge denied plaintiff’s third request for an extension of time,  
10 finding that plaintiff had not shown due diligence in responding to defendant’s motion for  
11 summary judgment and concluding that “[p]laintiff has not explained why he needs access to the  
12 law library or why he has only completed part of the opposition during the past 9 months. This  
13 case cannot be permitted to languish indefinitely while Plaintiff seeks numerous extensions of  
14 time.” (Doc. No. 66 at 2.) The assigned magistrate judge, for good cause, directed that plaintiff  
15 file his opposition no later than March 10, 2022.

16 On March 14, 2022, plaintiff filed yet a fourth request for an extension of time, or in the  
17 alternative, his opposition to defendant’s motion for summary judgment, which, although  
18 unfinished, still provided plaintiff’s substantive response and arguments in opposition to the  
19 merits of defendant’s motion. (Doc. No. 67.) However, because plaintiff neglected to sign this  
20 document before filing it, the assigned magistrate judge issued an order striking plaintiff’s filing  
21 due to the lack of a signature. (Doc. No. 68.)

22 On March 16, 2022, the assigned magistrate judge issued findings and recommendations  
23 recommending that this action be dismissed due to plaintiff’s failure to comply with the court’s  
24 order that he file a response to defendant’s motion for summary judgment. (Doc. No. 69.) The  
25 findings and recommendations were served on the parties and contained notice that any  
26 objections thereto were to be filed within ten (10) days from the date of service. (*Id.* at 3.) On  
27 March 30, 2022, plaintiff filed objections to the pending findings and recommendations, and he  
28 also re-filed the document that had been stricken, this time bearing his signature. (Doc. Nos. 70,

1 71.) On March 31, 2022, the assigned magistrate judge issued an order addressing plaintiff's  
2 signed filing, but only to the extent of denying plaintiff's fourth request for an extension of time.  
3 (Doc. No. 72.) On April 1, 2022, defendant filed a response to plaintiff's objections to the  
4 pending findings and recommendations. (Doc. No. 73.)

5 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this  
6 court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,  
7 including plaintiff's objections and defendant's response thereto, the court concludes the findings  
8 and recommendations are not supported by the record and declines to adopt them.

9 The findings and recommendations are based on plaintiff's failure to timely file a response  
10 to defendant's motion for summary judgment. (Doc. No. 72.) However, plaintiff's filing on  
11 March 14, 2022 included both a further request for an extension of time and, in the alternative, a  
12 substantive response to defendant's motion. If not for the technical deficiency that plaintiff  
13 neglected to sign that filing, leading the assigned magistrate judge to strike it from the docket,  
14 plaintiff's filing at least arguably would have complied with the court's order directing that he  
15 response to defendant's motion for summary judgment. Rather than allow plaintiff to cure that  
16 deficiency, the assigned magistrate judge promptly issued the pending findings and  
17 recommendations recommending dismissal of this action with prejudice. Moreover, even after  
18 plaintiff filed a signed version of his filing, the assigned magistrate judge issued an order denying  
19 the requested extension of time but did not address the "alternative" aspect of plaintiff's filing, in  
20 which plaintiff provided a substantive response in opposition to defendant's motion for summary  
21 judgment.

22 Accordingly, the undersigned declines to adopt the pending findings and  
23 recommendations. This matter will be referred back to the assigned magistrate judge for  
24 consideration of plaintiff's "in the alternative" opposition (Doc. No. 70) addressing the merits of  
25 defendant's pending motion for summary judgment. The assigned magistrate judge shall also set  
26 a deadline for defendant to file a reply, if any, to plaintiff's opposition.

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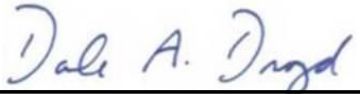
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For the reasons set forth above:

1. The undersigned declines to adopt the findings and recommendations issued on March 16, 2022 (Doc. No. 69); and
2. This matter is referred back to the assigned magistrate for further proceedings consistent with this order.

IT IS SO ORDERED.

Dated: April 27, 2022

  
UNITED STATES DISTRICT JUDGE