

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL SCHMITT,

Plaintiff,

v.

WARDEN, et al.,

Defendants.

Case No.: 1:17-cv-00829-DAD-JDP

FINDINGS AND RECOMMENDATIONS
THAT THE COURT DISMISS THE CASE
FOR PLAINTIFF’S FAILURE TO
PROSECUTE AND FAILURE TO STATE A
CLAIM

OBJECTIONS DUE IN FOURTEEN DAYS

(Doc. Nos. 13, 15.)

Plaintiff is proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. Plaintiff filed his original complaint on May 22, 2017. (Doc. No. 1.) On September 29, 2017, the court dismissed plaintiff’s complaint for failure to state a claim with leave to amend within thirty days. (Doc. No. 11.) On November 13, 2017, plaintiff filed his first amended complaint. (Doc. No. 12.)

On March 7, 2018, Judge Michael J. Seng issued findings and recommendations that the court dismiss the case for failure to state a claim, and court staff attempted to serve those documents by mail on plaintiff at his address of record. (See Doc. No. 13.) On March 28, 2018, that order was returned to the court as undeliverable with a notation “Inmate Discharged - Inactive.” On April 30, 2018, Chief United States District Judge Lawrence J. O’Neill issued an order reassigning this case to the undersigned, and court staff attempted to serve that order by mail on plaintiff at his address of record. (Doc. No. 14.) On May 15, 2018, that order was

1 returned to the court as undeliverable with a notation “Discharged - Inactive.”

2 Plaintiff has an obligation to keep the court apprised of his current address. Local Rule
3 183(b) provides, “If mail directed to a plaintiff in propria persona by the Clerk is returned by
4 the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties
5 within sixty-three (63) days thereafter of a current address, the Court may dismiss the action
6 without prejudice for failure to prosecute.” Under Local Rule 183(b), plaintiff’s notice of
7 address change was due by May 30, 2018, but he failed to file it.

8 On August 27, 2018, the court issued an order directing plaintiff to show cause why this
9 case should not be dismissed for failure to prosecute. (Doc. No. 15.) Plaintiff failed to
10 respond, and the deadline for his response has passed.

11 Accordingly, the undersigned recommends that plaintiff’s first amended complaint be
12 dismissed without prejudice for failure to prosecute under Local Rule 183(b) and for failure to
13 state a claim.

14 The undersigned submits the findings and recommendations to the district judge
15 presiding over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of
16 Practice for the United States District Court, Eastern District of California. Within 14 days of
17 the service of the findings and recommendations, plaintiff may file written objections to the
18 findings and recommendations with the court and serve a copy on all parties. That document
19 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
20 district judge will review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).
21 Plaintiff’s failure to file objections within the specified time may result in the waiver of rights
22 on appeal. See *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

23
24 IT IS SO ORDERED.

25 Dated: September 24, 2018

26 
UNITED STATES MAGISTRATE JUDGE