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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRED LEON JACKSON,

Plaintiff,

No. CIV S-04-2516 GEB EFB P

vs.

J. SPAULDING, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On August 1, 2008, defendants filed a motion to dismiss this action on the ground that plaintiff failed to exhaust available administrative remedies before filing suit. *See* 42 U.S.C. § 1997e; Fed. R. Civ. P. 12(b). Although being granted three extensions of time to file a response, plaintiff had not filed an opposition or statement of no opposition to the motion to dismiss. The court granted plaintiff his final extension on January 9, 2009. That order provided that no further extensions of time would be granted and also set out the court’s authority to dismiss an action with or without prejudice if a party disobeys an order or the applicable rules of court. *See* Fed. R. Civ. P. 41(b).

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1 The 20-day period has expired and plaintiff has not filed an opposition or statement of no
2 opposition to the motion to dismiss, or otherwise responded to the January 9, 2009, order. This
3 action must be dismissed.

4 Accordingly, for the reasons set forth in this court's January 9, 2009, order, it is
5 RECOMMENDED that this action be dismissed. *See* Fed. R. Civ. P. 41(b).

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
8 after being served with these findings and recommendations, any party may file written
9 objections with the court and serve a copy on all parties. Such a document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
11 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
12 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

13 Dated: February 13, 2009.

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16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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