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

DWAYNE SWEARINGTON,

Plaintiff,

No. CIV S-06-1407 GEB EFB (TEMP) P

vs.

DR. WEDELL, et al.,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. By order filed January 12, 2011, plaintiff was directed to file a pretrial statement within thirty days. On February 2, 2011, plaintiff was granted an additional forty-five days in which to file his pretrial statement. The time for acting has passed and plaintiff has failed to comply.

A party’s failure to comply with any order or with the Local Rules “may be grounds for imposition of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.” Local Rule 11-110. The court may recommend that an action be dismissed with or without prejudice, as appropriate, if a party disobeys an order or the Local Rules. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1252 (9th Cir. 1992) (district court did not abuse discretion in dismissing *pro se* plaintiff’s complaint for failing to obey an order to re-file an amended

1 complaint to comply with Federal Rules of Civil Procedure); *Carey v. King*, 856 F.2d 1439,
2 1440-41 (9th Cir. 1988) (dismissal for *pro se* plaintiff's failure to comply with local rule
3 regarding notice of change of address affirmed).

4 On July 15, 2008, the court directed the Clerk of the Court to send plaintiff a copy of the
5 Local Rules of this Court, and explained that failure to comply with the Local Rules or any order
6 of this court may result in a recommendation of dismissal. Furthermore, on April 30, 2009, the
7 court issued a scheduling order stating that in the event this action survived any dispositive
8 motions that were filed, the parties would be required to file pretrial statements pursuant to then
9 Local Rule 16-281 and further admonished the parties that "the parties are advised that failure to
10 file a pretrial statement may result in the imposition of sanctions, including dismissal of this
11 action." *See* Dckt. No. 37 at 5:13-14.

12 Accordingly, it is hereby ORDERED that defendants are relieved of their obligation to
13 file a further pretrial statement.

14 Further, it is hereby RECOMMENDED that this action be dismissed for failure to
15 prosecute. *See* Fed. R. Civ. P. 16(f); Fed. R. Civ. P. 41(b); Local Rule 110.

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after
18 being served with these findings and recommendations, any party may file written objections
19 with the court and serve a copy on all parties. Such a document should be captioned "Objections
20 to Magistrate Judge's Findings and Recommendations." Failure to file objections within the
21 specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158
22 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: April 12, 2011.

24 
25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE