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

DESMON LOEB,

Plaintiff,

No. CIV S-07-0139 GEB EFB P

vs.

AUDETTE, et al.,

Defendants.

ORDER AND FINDINGS
AND RECOMMENDATIONS

Plaintiff is a prisoner without counsel suing for alleged civil rights violations. *See* 42 U.S.C. § 1983. Currently pending is defendants Audette, Weston and Callison’s request to be relieved of their obligation to file a pretrial statement. As defendants correctly point out in their request, plaintiff has failed to timely file a pretrial statement in accord with this court’s December 18, 2008, order.

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 May 24, 2007, the Clerk of the Court sent to plaintiff a copy of the Local Rules of this
5 Court, and explained that failure to comply with the Local Rules or any order of this court may
6 result in a recommendation of dismissal. Furthermore, on September 17, 2007, the court issued a
7 discovery and 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 Local
9 Rule 16-281. On December 18, 2008, this court ordered plaintiff to file his pretrial statement
10 within thirty days. The thirty-day period has passed and plaintiff has not filed a pretrial
11 statement or otherwise responded to that order. Accordingly, defendants need not file a pretrial
12 statement and the undersigned recommends this action be dismissed.

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

15 Further, it is hereby RECOMMENDED that this action be dismissed without prejudice.
16 *See* Fed. R. Civ. P. 16(f); Local Rule 11-110.

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

24 DATED: February 9, 2009.

25 
26 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE