

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MICHAEL RAY ACOSTA, SR.,

Plaintiff,

vs.

SIMPSON, *et al.*,

Defendants.

Case No. 2:07-cv-00513-PMP-GWF

**FINDINGS AND
RECOMMENDATIONS**

On September 3, 2009, the Court ordered Plaintiff to file his pre-trial statement on or before September 14, 2009. (Dkt. #32). Plaintiff failed to meet that deadline. Defendants filed their pre-trial statement with the Court on September 28, 2009. (See Dkt. #34). On November 9, 2009, the Court issued an Order to Show Cause within fifteen (15) days why the Court should not recommend dismissal of Plaintiff’s Complaint due to Plaintiff’s failure to file a pre-trial statement. (Dkt. #35) To date, Plaintiff has not filed a pre-trial statement and has not responded to the Court’s Order to Show Cause. Accordingly,

IT IS HEREBY RECOMMENDED that Plaintiff’s Complaint (Dkt. #1) should be **DISMISSED with prejudice** based on Plaintiff’s failure to file a pre-trial statement and failure to respond to the Court’s Order to Show Cause.

NOTICE

These Findings and Recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty (20) days after being served with these Findings and Recommendations, plaintiff may file written

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1 objections with the court. Such a document should be captioned “Objections to Magistrate
2 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections
3 within the specified time may waive the right to appeal the District Court’s order. *Martinez v.*
4 *Ylst*, 951 F.2d 1153 (9th Cir. 1991).

5 DATED this 14th day of December, 2009.

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8 **GEORGE FOLEY, JR.**
9 **United States Magistrate Judge**