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

LONZELL GREEN,

Plaintiff,

No. 2:07-cv-02487-KJN P

vs.

JAMES WALKER, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This case was reassigned to the undersigned on February 9, 2010.<sup>1</sup>

This action, filed October 22, 2007, was transferred to this court from the United States District Court for the Northern District of California on November 19, 2007. (Dkt. No. 1.) On January 9, 2008, this court recommended dismissal of this action based on plaintiff’s failure to comply with the court’s order directing him to file an in forma pauperis affidavit or pay the filing fee. (Dkt. No. 5.) In response to objections timely filed by plaintiff, the court accorded plaintiff additional time within which to file his in forma pauperis application, which he filed on

\_\_\_\_\_ <sup>1</sup> This action is referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), Local General Order No. 262, and E.D. Cal. L.R. (“Local Rule”) 302.

1 February 26, 2008. (Dkt. Nos. 6, 7, 8.) The court thereafter vacated its findings and  
2 recommendations, granted plaintiff in forma pauperis status and, in a detailed screening order,  
3 dismissed the complaint with leave to file an amended complaint in conformance with standard  
4 pleading requirements. (Dkt. No. 9.)

5           Following an extension of time, plaintiff filed an amended complaint. (Dkt. Nos.  
6 12, 14.) However, pursuant to a second careful screening order filed February 26, 2009, the court  
7 dismissed plaintiff's amended complaint with leave to file, within thirty days, a second amended  
8 complaint. (Dkt. No. 17.) This deadline was twice extended, on March 27, 2009 (Dkt. No. 19),  
9 and on May 11, 2009 (Dkt. No. 21). Since plaintiff did not file a second amended complaint  
10 within the extended period of time, the court filed findings and recommendations again  
11 recommending dismissal of this action. (Dkt. No. 22.) Plaintiff thereafter objected, and the  
12 court vacated its findings and recommendations and accorded plaintiff a "final" thirty days within  
13 which to file a second amended complaint. (Dkt. Nos. 23, 24).

14           Plaintiff again failed to file a second amended complaint or otherwise  
15 communicate with the court, and thus the court again filed findings and recommendations  
16 recommending dismissal of this action. (Dkt. No. 25.) In response to objections timely filed by  
17 plaintiff, the court vacated these findings and recommendations and again accorded plaintiff  
18 another thirty days within which to file a second amended complaint. (Dkt. Nos. 26, 27.) The  
19 court emphasized in this January 29, 2010 order that this was the "final thirty day extension of  
20 time to file a second amended complaint," that "no further extensions of time will be granted for  
21 this purpose," and that "[f]ailure to comply with the court's order will result in a  
22 recommendation for dismissal of this action." (Dkt. No. 27, at 1-2.)


23           The extended period of time for filing a second amended complaint (totaling more  
24 than a year) expired on March 1, 2010, and plaintiff has neither filed a further pleading nor  
25 otherwise communicated with the court. The court will therefore recommend dismissal of this  
26 action.

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Further, IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 21 days after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: April 13, 2010

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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