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

MICHAEL M. COTTRELL,

Plaintiff,

No. CIV S-07-2574 GEB EFB P

vs.

R.K. WONG, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On April 5, 2011, defendant filed a motion for terminating sanctions pursuant to Fed. R. Civ. P. 37(a)(3)(B). Plaintiff did not oppose the motion.

Accordingly, on May 24, 2011, the court advised plaintiff of the requirements for filing an opposition to the motion, that failure to file a written opposition or a statement of no opposition may be deemed a waiver of any opposition to the motion, gave plaintiff 30 days to file an opposition or statement of non-opposition and warned him that failure to do so could result in dismissal. *See* Fed. R. Civ. P. 41(b). The time for acting has passed and plaintiff has not filed an opposition or a statement of no opposition.

Plaintiff has disobeyed this court’s orders and failed to prosecute this action. The appropriate sanction is dismissal without prejudice.

1 Accordingly, it is RECOMMENDED that this action be dismissed without prejudice.

2 *See* Fed. R. Civ. P. 41(b).

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

10 Dated: July 12, 2011.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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