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

VERNON TOWNER,

Plaintiff,

No. CIV S-08-2823 LKK EFB P

vs.

LESANE, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff proceeds without counsel and seeks relief for alleged civil rights violations. *See* 42 U.S.C. § 1983. On March 26, 2010, defendant moved to dismiss this action on the ground that plaintiff failed to exhaust administrative remedies. Dckt. No. 19. On January 5, 2010, the court advised plaintiff of the requirements for opposing a motion to dismiss and/or for summary judgment for failure to exhaust available administrative remedies. *See Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003). That order also informed plaintiff of the requirements for filing an opposition to the pending motion and that failure to oppose such a motion might be deemed a waiver of opposition to the motion. Plaintiff failed to file an opposition.

On May 4, 2010, the court gave plaintiff 21 days to file an opposition or statement of non-opposition and warned him that failure to do so could result in a recommendation that this action be dismissed. *See Fed. R. Civ. P. 41(b)*. The 21 days have passed and plaintiff did not

1 file an opposition or a statement of no opposition.<sup>1</sup>

2 Plaintiff has been warned that he must file a response to defendant's motion. Plaintiff  
3 has disobeyed this court's orders. The appropriate sanction is dismissal without prejudice.

4 Accordingly, it is RECOMMENDED that this action be dismissed without prejudice.  
5 *See* Fed. R. Civ. P. 41(b).

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

13 Dated: June 29, 2010.

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15 EDMUND F. BRENNAN  
16 UNITED STATES MAGISTRATE JUDGE

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22 <sup>1</sup> Although it appears from the file that plaintiff's copy of the order was returned,  
23 plaintiff was properly served. It is the plaintiff's responsibility to keep the court apprised of his  
24 current address at all times. Pursuant to Local Rule 182(f), service of documents at the record  
25 address of the party is fully effective. The court notes, however, that on May 4, 2010, defendant  
26 reserved the motion to dismiss at a new address for plaintiff. Although it is plaintiff's  
responsibility to inform the court of his current address, the court, in an abundance of caution,  
directs the Clerk of the Court to serve these findings and recommendations at the new address  
for plaintiff (Vernon Towner, T-38313, Richard J. Donovan Correctional Facility, P.O. Box  
799004, San Diego, CA 92179-9004), in addition to the address reflected on the docket. *See*  
Dckt. No. 22.