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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

_____/

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 passed and plaintiff did not file an

1 opposition or a statement of no opposition. The court therefore recommended that this action be
2 dismissed. Dckt. No. 23. On July 8, 2010, however, plaintiff requested an extension of time to
3 oppose defendant's motion, explaining he had been hospitalized and was not in possession of his
4 property. Dckt. No. 24. Therefore, the court vacated its recommendation of dismissal, granted
5 plaintiff's request for a 45-day extension of time, and warned plaintiff that failure to comply with
6 the order would result in another recommendation that this action be dismissed. The 45-days
7 have passed and plaintiff has not filed an opposition or statement of no opposition.¹

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

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

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

19 Dated: September 22, 2010.

20 
21 EDMUND F. BRENNAN
22 UNITED STATES MAGISTRATE JUDGE
23
24

25 ¹ Although it appears from the file that plaintiff's copy of the order was returned,
26 plaintiff was properly served. It is the plaintiff's responsibility to keep the court apprised of his
current address at all times. Local Rule 182(f).