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

DELANO LAMONT PINCKNEY,

Plaintiff,

No. CIV S-08-3076 GEB EFB PS

vs.

YUBA COMMUNITY COLLEGE,

Defendant.

FINDINGS AND RECOMMENDATIONS

_____/

On February 4, 2009, plaintiff, who proceeds in *pro se*,¹ was ordered to: (1) show cause in writing, on or before February 18, 2009, why sanctions should not be imposed for his failure to file an opposition or a statement of non-opposition to defendant’s Motion to Quash or Dismiss for Insufficient Process and Service, Dckt. No. 31; and (2) file an opposition or statement of no opposition to defendant’s motion. Dckt. No. 37. Plaintiff was cautioned that “[f]ailure to comply with this order shall be construed as abandonment of this case, and shall result in a recommendation that this action be dismissed.” Dckt. No. 37, at p. 2.

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¹ This action proceeds before the undersigned pursuant to E. D. Cal. L. R. (“Local Rule”) 72-302(c)(21). *See* 28 U.S.C. § 636(b)(1).

1 The court's order was repeatedly returned as "undeliverable"² and the deadline has long
2 since passed. Plaintiff has neither responded to the court's order nor otherwise communicated
3 with the court and it appears that plaintiff has abandoned this case.

4 As the court explained in its last order, plaintiff's failure to participate in this action
5 warrants its dismissal. *See* Fed. R. Civ. P. 41(b) (authorizing dismissal of an action "[i]f the
6 plaintiff fails to prosecute or to comply with these rules or a court order . . ."); *see also* E. D. Cal.
7 L. R. 11-110 ("Failure of counsel or of a party to comply with these Rules or with any order of
8 the Court may be grounds for imposition by the Court of any and all sanctions authorized by
9 statute or Rule or within the inherent power of the Court"). Plaintiff's *pro se* status does not
10 derogate this authority. E. D. Cal. L. R. 83-183.

11 Accordingly, IT IS HEREBY RECOMMENDED that:

- 12 1. This action be dismissed for failure to prosecute and failure to comply with the federal
13 and local rules of court, *see* Fed. R. Civ. P. 41(b); E. D. Cal. L. R. 11-110; and
14 2. Defendant's motion to quash, Dckt. No. 31, be denied as moot.

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

22 DATED: July 9, 2009.

23 
24 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

25 ² Plaintiff was nonetheless properly served using the address plaintiff provided. It is the
26 plaintiff's responsibility to keep the court apprised of his current address at all times. Pursuant
to Local Rule 83-182(f), service of documents at the record address of the party is fully effective.