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

HERMAN TIEMENS, JR.,

Plaintiff,

No. CIV S-09-0052 FCD EFB P

vs.

R.L. ANDREASEN, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a prisoner without counsel seeking relief for alleged civil rights violations. *See* 42 U.S.C. § 1983. On July 20, 2010, defendants Andreasen and Khoury moved for summary judgment. Dckt. No. 27; *see* Fed. R. Civ. P. 56. On August 7, 2009, the court advised plaintiff of the requirements for opposing a motion pursuant to Rule 56 of the Federal Rules of Civil Procedure and informed plaintiff that failure to file an opposition to such a motion could be considered waiver of any such opposition. Dckt. No. 13; *see Rand v. Rowland*, 154 F.3d 952, 957 (9th Cir. 1998) (*en banc*), *cert. denied*, 527 U.S. 1035 (1999); *Klinge v. Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

On August 4, 2010, plaintiff sought a 30-day extension of time to file an opposition to the motion for summary judgment. Dckt. No. 29. The court granted the extension on August 10, 2010. Dckt. No. 31. Rather than file the opposition within the time provided, however, plaintiff

1 sought an additional extension of 15 days on September 8, 2010. Dckt. No. 33. The court
2 granted the extension but admonished plaintiff that, absent extraordinary circumstances, no
3 further extensions would be given. Dckt. No. 34. The time for filing the opposition to
4 defendants' motion for summary judgment, as extended by the orders dated August 10 and
5 September 13, 2010, has passed, and plaintiff has not filed an opposition or statement of no
6 opposition to the motion.

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

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

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

18 Dated: October 18, 2010.

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20 EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE
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