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

EDWARD THOMAS,

Plaintiff,

No. CIV S-09-0871 KJM P

vs.

L. BETTI, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se with an action under 42 U.S.C. § 1983. Plaintiff originally filed this action in state court, and the defendants removed it to this court pursuant to 28 U.S.C. 1441(b). Defendants then filed a motion to dismiss, arguing that plaintiff had failed to exhaust administrative remedies prior to filing suit and, further, that the suit is duplicative of an action filed in this court. See Docket No. 8. Plaintiff initially did not respond to the motion to dismiss. On June 22, 2010, the court ordered him to file an opposition to the motion or a statement of non-opposition within thirty days. See Docket No. 11. Plaintiff complied by filing a statement of non-opposition, informing the court that he does not object to dismissal of this action “because it has now been re-filed in this court under case number 2:10-cv-1300 KJM (PC).” Docket No. 13.

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1 The court construes plaintiff's statement of non-opposition as a request for  
2 voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2). The court will  
3 therefore recommend this action be dismissed without prejudice. In so recommending, the court  
4 expresses no finding or opinion on the substantive or procedural merit of the case docketed as  
5 Case Number CIV S-10-1300 KJM.

6 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court assign this case  
7 to a district judge.

8 IT IS HEREBY RECOMMENDED that this case be dismissed (Docket No. 8)  
9 without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).

10 These findings and recommendations are submitted to the United States District  
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
12 one days after being served with these findings and recommendations, any party may file written  
13 objections with the court and serve a copy on all parties. Such a document should be captioned  
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
15 shall be served and filed within fourteen days after service of the objections. The parties are  
16 advised that failure to file objections within the specified time may waive the right to appeal the  
17 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: August 10, 2010.

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21 U.S. MAGISTRATE JUDGE

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