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

EARL WARNER,

Plaintiff,

No. 2:09-cv-1568 KJM EFB P

vs.

MATTHEW L. CATE, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On February 21, 2012, defendants filed a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Dckt. No. 53.

Despite two extensions of time, plaintiff has not opposed the motion. On April 19, 2012, the court granted plaintiff an extension of time to file an opposition or statement of non-opposition and warned plaintiff that failure to do so could result in a recommendation that this action be dismissed. On May 15, 2012, the court granted plaintiff a second extension of time to respond to the motion for summary judgment.<sup>1</sup> See Fed. R. Civ. P. 41(b). The time for acting has passed and plaintiff has not filed an opposition or a statement of no opposition.

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<sup>1</sup> That order also denied plaintiff's request for a protective order. Plaintiff's request for reconsideration of that order is pending before the district judge.

1 Plaintiff has been warned that he must file a response to defendants' motion. Plaintiff  
2 has disobeyed this court's orders and failed to prosecute this action.

3 Accordingly, it is hereby RECOMMENDED that this action be dismissed without  
4 prejudice. See Fed. R. Civ. P. 41(b); E.D. Cal. Local Rule 110.

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

12 DATED: July 10, 2012.

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14 EDMUND F. BRENNAN  
15 UNITED STATES MAGISTRATE JUDGE  
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