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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. DEVELDER,
Plaintiff,
v.
J. HIRSCHLER, et al.,
Defendants.

No. 2:09-cv-1803-TLN-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On October 21, 2016, defendant Hirshler filed a motion for summary judgment, ECF No. 65, which also informed plaintiff of the requirements for opposing a motion for summary judgment. *See* Fed. R. Civ. P. 56; *Rand v. Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998). The time allowed for responding to the motion expired, and plaintiff failed to file an opposition or otherwise respond to the motion.

On January 25, 2017, the court warned plaintiff that failure to respond to defendant’s motion could result in a recommendation that this action be dismissed. *See* Fed. R. Civ. P. 41(b). The court also granted plaintiff a 21-day extension of time to respond. The time for acting has once again passed and plaintiff has not filed an opposition, a statement of no opposition, or otherwise responded to the court’s order. Plaintiff has disobeyed this court’s orders and failed to prosecute this action. The appropriate action is dismissal without prejudice.

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

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

Dated: February 22, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE