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

MARCUS RUBEN ELLINGTON,

Plaintiff,

No. 2:09-cv-2985 MCE KJN P

vs.

DIRECTOR OF CORRECTIONS,
et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding without counsel in this civil rights action filed October 26, 2009. On December 23, 2009, this court dismissed plaintiff’s complaint with leave to file an amended complaint within thirty days, based on the failure of the complaint to demonstrate that plaintiff had exhausted his administrative remedies relative to an alleged 2007 assault. (Dkt. No. 16.) Plaintiff was informed that “failure to file an amended complaint in accordance with this order may result in the dismissal of this action.” (*Id.* at 5-6.) On February 12, 2010, following reassignment of this action to the undersigned magistrate judge,¹ the court granted plaintiff an additional twenty-eight days within which to file an amended complaint in

¹ This action is referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), Local General Order No. 262, and E.D. Cal. L.R. (“Local Rule”) 302.

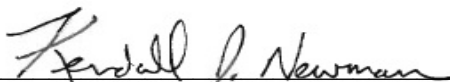
1 compliance with the court's December 23, 2009 order. (Dkt. No. 21.)

2 The deadline has passed and plaintiff has neither filed an amended complaint nor
3 otherwise communicated with the court. The court will therefore recommend dismissal of this
4 action. See Local Rule 110 ("Failure of counsel or of a party to comply with these Rules or with
5 any order of the Court may be grounds for imposition by the Court of any and all sanctions").

6 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed
7 without prejudice.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 21 days
10 after being served with these findings and recommendations, plaintiff may file written objections
11 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
12 and Recommendations." Plaintiff is advised that failure to file objections within the specified
13 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
14 (9th Cir. 1991).

15 DATED: April 12, 2010

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19 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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