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

SHANNON WHITE,

Plaintiff,

No. CIV S-10-0577 EFB P

vs.

R. HILL, et al.,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a former state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On September 8, 2011, defendants Rutz, Hill, Hehir, Johnson, Vining, Caramanoff and Young filed a motion to dismiss on the ground that plaintiff has failed to exhaust his available administrative remedies. *See* Fed. R. Civ. P. 12(b); 42 U.S.C. § 1997e(a). Despite being granted an extension of time to do so, plaintiff failed to timely file an opposition or a statement of no opposition to the motion to dismiss. *See* Dckt. No. 36 (order granting plaintiff an extension of time; re-served on October 28, 2011 following plaintiff’s filing of a notice of change of address).

On December 5, 2011, the court gave plaintiff twenty-one days to file an opposition or statement of non-opposition and warned him that failure to do so could result in a recommendation that this action be dismissed. *See* Fed. R. Civ. P. 41(b). The time for acting

1 has passed and plaintiff has not filed an opposition, a statement of no opposition or otherwise
2 responded to the court's order.

3 Plaintiff has twice been warned that he must file a response to defendants' motion.
4 Plaintiff has disobeyed this court's orders and failed to prosecute this action. The appropriate
5 sanction is dismissal without prejudice.

6 Accordingly, it is ORDERED that the Clerk shall randomly assign a United States
7 District Judge to this case.

8 Further, it is hereby RECOMMENDED that this action be dismissed without prejudice.
9 See Fed. R. Civ. P. 41(b).

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
12 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." Failure to file objections
15 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
16 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

17 Dated: January 9, 2012.

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19 EDMUND F. BRENNAN
20 UNITED STATES MAGISTRATE JUDGE
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