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

JERRY W. BAKER,

Plaintiff,

No. CIV S-10-0985 JAM CKD P

vs.

SOLANO COUNTY JAIL, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

By order filed November 22, 2011, plaintiff was ordered to personally serve on counsel for defendants a copy of the discovery responses plaintiff allegedly served at some unspecified prior date, and to file a copy of the completed and signed proof attesting to such service with the court, within fourteen days. Plaintiff was advised that failure to timely comply with this order would result in a recommendation that this action be dismissed based on plaintiff's failure to cooperate in the discovery process. (Dkt. No. 34 at 3-4.) The fourteen day period has now expired, and plaintiff has done neither.¹

Also pending is defendants' request for attorneys' fees incurred in preparing their motion to compel, in the amount of \$456.00. (Dkt. No. 24-1 at 3.) Federal Rule of Civil

¹ Instead, plaintiff has twice requested the court to forward to a new address unspecified documents previously sent by defendants. Nothing on the docket suggests that plaintiff was not served with the court's November 22, 2011 order.

1 Procedure 37(a)(5) provides that, if “the motion [to compel] is granted ..., the court must, after
2 giving an opportunity to be heard, require the party ... whose conduct necessitated the motion ...
3 to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s
4 fees” unless “circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(a)(5)(A)(iii).
5 Here, plaintiff is a prisoner proceeding in forma pauperis. Should the district court adopt these
6 findings, plaintiff will be effectively sanctioned for his failure to cooperate in discovery by the
7 dismissal of his action with prejudice. In such circumstances, the court finds that an award of
8 attorneys’ fees would be unjust and declines to award them at this time.

9 Accordingly, IT IS HEREBY ORDERED that defendant’s May 20, 2011 motion
10 for an award of attorneys’ fees (Dkt. No. 24-1 at 3) is denied.

11 IT IS HEREBY RECOMMENDED that:

12 1. Defendants' December 19, 2011 motion to dismiss (Dkt. No. 37) be granted.

13 See Local Rule 110; Fed. R. Civ. P. 41(b).

14 2. The amended complaint (Dkt. No. 12) be dismissed with prejudice and this
15 case closed.

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

23 Dated: January 9, 2012

24 
25 _____
26 CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE