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

MICHAEL GENE MCKINNEY,

Plaintiff,

No. CIV S-10-1139 FCD EFB PS

vs.

TEHAMA COUNTY; RICHARD  
SCHEULER; IRENE RODRIGUEZ,

Defendants.

ORDER AND  
FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /  
This case, in which plaintiff is proceeding *pro se*, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). On August 6, 2010, defendants Richard Scheuler and Irene Rodriguez moved to dismiss plaintiff’s complaint pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6), and noticed the motion to be heard on September 15, 2010. Dckt. No. 9. Then, on August 9, 2010, defendant Tehama County filed a motion to dismiss pursuant to Rule 12(b)(6), and also noticed the hearing for September 15, 2010. Dckt. No. 10.

On September 9, 2010, because plaintiff had not filed either an opposition or a statement of non-opposition to the motions, the undersigned continued the hearing on the motions to October 27, 2010; ordered plaintiff to show cause, in writing, no later than October 13, 2010, why sanctions should not be imposed for his failure to timely file an opposition or a statement of

1 non-opposition to the pending motions; and directed plaintiff to file an opposition to the motions,  
2 or a statement of non-opposition thereto, no later than October 13, 2010. Dckt. No. 13. The  
3 undersigned further stated that “[f]ailure of plaintiff to file an opposition will be deemed a  
4 statement of non-opposition to the pending motions, and may result in a recommendation that  
5 this action be dismissed for lack of prosecution. *See* Fed. R. Civ. P. 41(b).” *Id.*

6 Although the deadlines have now passed, the court docket reflects that plaintiff has not  
7 filed a response to the order to show cause, an opposition to defendants’ motions, or a statement  
8 of non-opposition to the motions. In light of plaintiff’s failures, the undersigned will recommend  
9 that this action be dismissed for failure to prosecute and that defendants’ motions to dismiss be  
10 denied as moot. *See* Fed. R. Civ. P. 41(b); L.R. 110.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The hearing date of October 27, 2010 on defendants’ motions to dismiss, Dckt. Nos. 9  
13 and 10, is vacated; and  
14 2. The status (pretrial scheduling) conference currently set for hearing on December 15,  
15 2010, is vacated.<sup>1</sup>

16 IT IS FURTHER RECOMMENDED that:

- 17 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on  
18 plaintiff’s failure to prosecute the action;  
19 2. Defendants’ motions to dismiss, Dckt. Nos. 9 and 10, be denied as moot; and  
20 3. The Clerk of Court be directed to close this case.

21 These findings and recommendations are submitted to the United States District Judge  
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
23 after being served with these findings and recommendations, any party may file written

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25 <sup>1</sup> As a result, the parties are not required to submit status reports as provided in the May  
26 10, 2010 and September 9, 2010 orders. *See* Dckt. Nos. 3, 13. However, if the recommendation  
of dismissal herein is not adopted by the district judge, the undersigned will reschedule the status  
conference and require the parties to submit status reports.

1 objections with the court and serve a copy on all parties. Such a document should be captioned  
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
3 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
4 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: October 18, 2010.

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7 EDMUND F. BRENNAN  
8 UNITED STATES MAGISTRATE JUDGE  
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