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

JOSE B. ORTIZ,

Plaintiff,

No. CIV S-10-1380 EFB P

vs.

REYNOLDS, et al.,

Defendants.

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On September 6, 2011, defendant Miranda filed a motion to dismiss on the ground that the amended complaint fails to state a claim upon which injunctive relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). Plaintiff failed to file an opposition or a statement of no opposition to the motion to dismiss.

Accordingly, on November 28, 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 has passed and plaintiff has not filed an opposition, a statement of no opposition or otherwise responded to the court's order.

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

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

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

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

15 Dated: January 9, 2012.

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18 EDMUND F. BRENNAN  
19 UNITED STATES MAGISTRATE JUDGE  
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