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

JEFF WREN,

Petitioner,

No. CIV S-10-1735 MCE EFB P

vs.

JAMES YATES,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus. *See* 28 U.S.C. § 2254. On September 22, 2010, respondent filed a motion to dismiss the petition. On October 27, 2010, the court informed petitioner that failure to file a written opposition or a statement of no opposition may be deemed a waiver of any opposition to the motion, gave petitioner 21 days to file an opposition or statement of non-opposition and warned him that failure to do so would result in recommendation that this action be dismissed. *See* Fed. R. Civ. P. 41(b).

The 21 days have passed and petitioner has not filed an opposition or a statement of no opposition and has not otherwise responded to the October 27, 2010 order, although court records reflect that petitioner was properly served with the motion and the October 27, 2010 order cautioning petitioner that he must respond to respondent’s motion.

1 A party's failure "to file written opposition or to file a statement of no opposition may be
2 deemed a waiver of any opposition to the granting of the motion and may result in the imposition
3 of sanctions." L. R. 230(l). Failure to comply with any order or with the Local Rules "may
4 be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or
5 within the inherent power of the Court." L. R. 110. The court may dismiss this action with or
6 without prejudice, as appropriate, if a party disobeys an order or the Local Rules. *See Ferdik v.*
7 *Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992) (district court did not abuse discretion in
8 dismissing *pro se* plaintiff's complaint for failing to obey an order to re-file an amended
9 complaint to comply with Federal Rules of Civil Procedure); *Carey v. King*, 856 F.2d 1439,
10 1440-41 (9th Cir. 1988) (dismissal for *pro se* plaintiff's failure to comply with local rule
11 regarding notice of change of address affirmed). Here, the appropriate sanction is dismissal
12 without prejudice.

13 Accordingly, it is RECOMMENDED that this action be dismissed without prejudice.
14 *See* Fed. R. Civ. P. 41(b); Rule 12, Rules Governing § 2254 Cases.

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

22 Dated: December 8, 2010.

23 
24 EDMUND F. BRENNAN
25 UNITED STATES MAGISTRATE JUDGE
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