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

KIRK STEVENSON,

Plaintiff,

No. CIV S-10-1902 EFB (TEMP) P

vs.

R. KADEVARI, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He seeks leave to proceed *in forma pauperis*. See 28 U.S.C. § 1915(a). This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. See 28 U.S.C. § 636; see also E.D. Cal. Local Rules, Appx. A, at (k)(4).


On November 30, 2010, defendant Glover, the sole defendant in this action, moved to dismiss this action on the ground that plaintiff failed to exhaust administrative remedies. See Fed. R. Civ. P. 12(e); 42 U.S.C. § 1997. On September 28, 2010, the court advised plaintiff of the requirements for opposing a motion to dismiss and/or for summary judgment for failure to exhaust available administrative remedies. See *Wyatt v. Terhune*, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003). That order also informed plaintiff of the requirements for filing an opposition to the

1 pending motion and that failure to oppose such a motion might be deemed a waiver of opposition
2 to the motion. Plaintiff failed to file an opposition.

3 On January 19, 2011, the court gave plaintiff 21 days to file an opposition or statement of
4 non-opposition and warned him that failure to do so could result in a recommendation that this
5 action be dismissed. *See* Fed. R. Civ. P. 41(b). The 21 days have passed and plaintiff did not
6 file an opposition or a statement of no opposition. Plaintiff has been warned that he must file a
7 response to defendant's motion. Plaintiff has disobeyed this court's orders. The appropriate
8 sanction is dismissal without prejudice.

9 Accordingly, this action is DISMISSED without prejudice. *See* Fed. R. Civ. P. 41(b).

10 Dated: March 23, 2011.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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