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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY PENTON,  
Plaintiff,  
v.  
S. NUNEZ,  
Defendants.

No. 2:11-cv-0518 GEB KJN P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

By order filed August 26, 2014, plaintiff was ordered to show cause, within thirty days, why this action should not be dismissed for his failure to serve remaining defendant Nunez pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (ECF No. 61.) On November 10, 2014, plaintiff filed a response to the order to show cause, and a request for equitable reconsideration under Rule 60(b) of the Federal Rules of Civil Procedure. (ECF No. 65.) However, rather than respond to the order to show cause as to defendant Nunez, plaintiff sought equitable relief, requesting that the court allow him to amend to again pursue claims against Mailroom Supervisor Johnson, who was previously dismissed, allegedly based on new evidence. On November 25, 2014, plaintiff was granted thirty days in which to file a proposed third amended complaint, with briefing pursuant to Local Rule 230(1). Subsequently, defendants filed an opposition to plaintiff's request for reconsideration, and plaintiff filed a request for extension of time to submit the proposed third amended complaint. On January 9, 2015, plaintiff was


1 granted an additional thirty days. Such thirty day period has now expired, and plaintiff has not  
2 submitted the proposed third amended complaint pursuant to the November 25, 2014 order,  
3 shown cause as to defendant Nunez, or otherwise responded to the court's order.

4 In light of the above, IT IS HEREBY ORDERED that defendants' request for clarification  
5 of the January 9, 2015 order (ECF No. 70) is denied; and

6 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See  
7 Fed. R. Civ. P. 4(m); Local Rule 110; Fed. Rule 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, plaintiff may file written objections  
11 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
12 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
13 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
14 (9th Cir. 1991).

15 Dated: February 26, 2015

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18 KENDALL J. NEWMAN  
19 UNITED STATES MAGISTRATE JUDGE

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