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

MARCELLUS COOKSEY,

Plaintiff,

No. 2:11-cv-1374 GEB EFB P

vs.

K. WIN, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On April 2, 2012, defendants Chokatos and Fortune filed a motion to dismiss. *See Fed. R. Civ. P. 12(b), 12(b)(6)*. On May 11, 2012, 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 or a statement of no opposition. He did, however, file a letter with the court stating that he will “not be able to continue with this suit.” Dckt. No. 19.

Plaintiff has been warned that he must file a response to defendants’ motion. Plaintiff has disobeyed this court’s orders and failed to prosecute this action. It appears that plaintiff has abandoned the case. The appropriate action is dismissal without prejudice.

1 Accordingly, it is hereby RECOMMENDED that:

- 2 1. This action be dismissed without prejudice. *See* Fed. R. Civ. P. 41(b); E.D. Cal. Local
3 Rule 110, 183(b).
- 4 2. Defendant's motion to dismiss, Dckt. No. 16, be denied as moot.
- 5 3. The Clerk be directed to close the case.

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

13 Dated: June 18, 2012.

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15 EDMUND F. BRENNAN
16 UNITED STATES MAGISTRATE JUDGE

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