

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

JONATHAN HIGGINS,

Plaintiff,
vs.

No. 2:13-cv-0275 WBS EFB P

BARNES, 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. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On May 13, 2013, the court dismissed plaintiff’s complaint. The dismissal order explained the complaint’s deficiencies, gave plaintiff 30 days to file an amended complaint correcting those deficiencies, and warned plaintiff that failure to file an amended complaint would result in this action being dismissed. The time for acting has passed and despite an extension of time, plaintiff has not filed an amended complaint.

Instead, plaintiff requests that this action be stayed while he pursues administrative remedies. Dckt. No. 19. Plaintiff’s request must be denied. A prisoner must exhaust available administrative remedies before filing any papers in federal court and is not entitled to a stay of

1 judicial proceedings in order to exhaust. *Vaden v. Summerhill*, 449 F.3d 1047, 1051 (9th Cir.
2 2006); *McKinney v. Carey*, 311 F.3d 1198, 1198 (9th Cir. 2002).

3 Plaintiff has not complied with the order directing that he file an amended complaint. A
4 party's failure to comply with any order or with the Local Rules "may be grounds for imposition
5 by the Court of any and all sanctions authorized by statute or Rule or within the inherent power
6 of the Court." E.D. Cal. Local Rule 110. The court may recommend that an action be dismissed
7 with or without prejudice, as appropriate, if a party disobeys an order or the Local Rules. *See*
8 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992) (district court did not abuse discretion in
9 dismissing *pro se* plaintiff's complaint for failing to obey an order to re-file an amended
10 complaint to comply with Federal Rules of Civil Procedure); *Carey v. King*, 856 F.2d 1439,
11 1440-41 (9th Cir. 1988) (dismissal for *pro se* plaintiff's failure to comply with local rule
12 regarding notice of change of address affirmed).

13 Accordingly, it is hereby ORDERED that plaintiff's request to stay this action (Dckt. No.
14 19) is denied.

15 Further, it is hereby RECOMMENDED that this action be dismissed. Fed. R. Civ. P.
16 41(b); E.D. Cal. Local Rule 110.

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

24 Dated: July 9, 2013.

25 
26 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE