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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT WILLIAM TUNSTALL, JR.,
Plaintiff,
v.
T. VIRGA, et al.,
Defendants.

No. 2:13-cv-699-MCE-EFB P

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 September 26, 2014, the court informed plaintiff of the deficiencies in his amended complaint and directed plaintiff to file an amended complaint within thirty days. ECF No. 29. The court also warned plaintiff that failure to comply with the order would result in a recommendation that this action be dismissed for failure to state a claim. *Id.* The time for acting has passed and plaintiff has not filed an amended complaint. Although plaintiff filed a document on October 7, 2014, it is not responsive to the court’s order.

A party’s failure to comply with any order or with the Local Rules “may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.” E.D. Cal. Local Rule 110. The court may dismiss an action with or

1 without prejudice, as appropriate, if a party disobeys an order or the Local Rules. *See Ferdik v.*
2 *Bonzelet*, 963 F.2d 1258, 1263 (9th Cir. 1992) (district court did not abuse discretion in
3 dismissing pro se plaintiff's complaint for failing to obey an order to re-file an amended
4 complaint to comply with Federal Rules of Civil Procedure); *Carey v. King*, 856 F.2d 1439,
5 1440-41 (9th Cir. 1988) (dismissal for pro se plaintiff's failure to comply with local rule
6 regarding notice of change of address affirmed).

7 Accordingly, it is hereby RECOMMENDED that this action be DISMISSED for failure to
8 state a claim and for failure to prosecute. 28 U.S.C. 1915A(b); Fed. R. Civ. P. 41(b); E. D. Cal.
9 Local Rule 110.

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

19 Dated: October 30, 2014.

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21 EDMUND F. BRENNAN
22 UNITED STATES MAGISTRATE JUDGE
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