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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THURMAN LEROY SPENCER,
Plaintiff,
v.
TIMOTHY VIRGA, et al.,
Defendants.

No. 2:13-cv-01626 AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. By order of June 27, 2014 plaintiff's first amended complaint was dismissed with leave to file a second amended complaint within thirty days. ECF No. 19. Plaintiff did not file an amended complaint, but he submitted a letter indicating that he no longer had access to his 10 boxes of legal property and books. ECF No. 22. Construing the letter as a request for an extension of time to file his amended complaint, the court granted plaintiff an extension of time to September 12, 2014 to file his second amended complaint.

On October 6, 2014, three weeks after the amended complaint was due, plaintiff served a document entitled "Motion Plaintiff Denied Property To Answer Court." ECF No. 26. This ten-page document again offers reasons plaintiff says he could not file the amended complaint, including the absence of his legal documents, his false imprisonment, and the denial of his rights. However, there is no explanation for why plaintiff could file his lengthy motion, but could not file


1 the second amended complaint. The action will therefore be dismissed for failure to prosecute.
2 See Fed. R. Civ. P. 41(b).

3 Accordingly, IT IS HEREBY ORDERED that the Clerk randomly assign a district court
4 judge to this case.

5 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice for
6 failure to prosecute.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. ' 636(b)(1). Within twenty-one days
9 after being served with these findings and recommendations, plaintiff may file written objections
10 with the court. The document should be captioned Objections to Magistrate Judge's Findings and
11 Recommendations. Failure to file objections within the specified time may waive the right to
12 appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

13 DATED: January 26, 2015

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15 ALLISON CLAIRE
16 UNITED STATES MAGISTRATE JUDGE
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