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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEREMY JUST,
Plaintiff,
v.
PAT COCHRAN, et al.,
Defendants.

No. 2:13-cv-01988 AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to the jurisdiction of the magistrate judge, ECF No. 15, however, defendants have neither consented nor declined to consent. Accordingly, the clerk will be ordered to assign this case to a district judge.

On April 30, 2014, some of the defendants moved to dismiss the complaint. ECF No. 31. On the same day, all defendants separately moved for summary judgment on exhaustion grounds. ECF No. 32. On October 10, 2014, this court ordered plaintiff to file his opposition to the motion to dismiss, or a statement of no opposition, within thirty days. ECF No. 35. In the same order, the court granted plaintiff sixty days to file his opposition, or a statement of no opposition, to defendants' motion for summary judgment. Id.

The order was served on plaintiff's address of record, but on October 15, 2014, the order was returned by the postal service as undeliverable. It appears that plaintiff has failed to comply

1 with Local Rule 183(b), which provides that “[i]f mail directed to a plaintiff in propria persona by
2 the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and
3 opposing parties within sixty-three (63) days thereafter of a current address, the Court may
4 dismiss the action without prejudice for failure to prosecute.” More than sixty-three days have
5 passed since the court order was returned by the postal service and plaintiff has failed to notify
6 the court of a current address.

7 Accordingly, IT IS HEREBY ORDERED THAT the Clerk of the Court shall assign this
8 case to a district judge.


9 Further, IT IS HEREBY RECOMMENDED THAT:

10 1. Pursuant to Local Rule 183(b), this action be DISMISSED, without prejudice, for
11 failure to prosecute; and

12 2. Defendants’ pending motions (ECF Nos. 31 & 32), be DENIED as moot.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)
15 days after being served with these findings and recommendations, plaintiff may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that
18 failure to file objections within the specified time may waive the right to appeal the District
19 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: December 22, 2014

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22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
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