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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK LEE DEARWESTER,  
Plaintiff,  
v.  
SACRAMENTO CO. SHERIFF’S DEPT.,  
et al.,  
Defendants.

No. 2:13-cv-2066 MCE DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. On October 13, 2015, the court set deadlines for discovery and pretrial motions. (ECF No. 33.) All discovery was due to be completed, and all motions to compel discovery were due to be filed, by January 29, 2016. In February 2016, the court granted plaintiff’s request for an extension of time to file a motion to compel. (ECF No. 40.) Pursuant to that February 25 order, any motion to compel was due to be filed by March 28, 2016. Plaintiff did not file a motion to compel prior to that deadline; nor has he filed one since.

On April 22, 2016, defendants moved for summary judgment. On May 16 and again on June 6, 2016, plaintiff moved for an extension of time to conduct discovery. In September, the court found plaintiff had failed to show good cause for another extension of the discovery cut-off. (ECF No. 52.) Based on the delay in addressing plaintiff’s motions for extension of time, the

1 court granted plaintiff one extension of time to respond to defendants' motion for summary  
2 judgment. (Id.) Plaintiff's opposition to the summary judgment motion was due on October 6,  
3 2016.

4 On September 26, 2016, plaintiff moved for an extension of time to file an opposition to  
5 defendants' summary judgment motion. On October 3, 2016, the court denied plaintiff's motion.  
6 (ECF No. 54.) The court noted that plaintiff had, at that point, had over five months to prepare an  
7 opposition to the summary judgment motion. To date, plaintiff has not filed an opposition to the  
8 summary judgment motion.

9 Local Rule 230(l) provides in part: "Failure of the responding party to file written  
10 opposition or to file a statement of no opposition may be deemed a waiver of any opposition to  
11 the granting of the motion . . . ." Id. On September 19, 2014, plaintiff was advised of the  
12 requirements for filing an opposition to a motion and that failure to oppose such a motion may be  
13 deemed a waiver of opposition to the motion. (ECF No. 16.) In addition, in the court's orders  
14 issued on September 6 and October 3, 2016, plaintiff was warned that his failure to file a timely  
15 opposition to the summary judgment motion "will result in a recommendation that this case be  
16 dismissed." (ECF Nos. 52, 54.)

17 Local Rule 110 provides that failure to comply with the Local Rules "may be grounds for  
18 imposition of any and all sanctions authorized by statute or Rule or within the inherent power of  
19 the Court." Id. In the order filed September 19, 2014, plaintiff was also advised that failure to  
20 comply with the Local Rules may result in a recommendation that the action be dismissed.

21 Finally, Rule 41(b) of the Federal Rules of Civil Procedure provides:

22 **Involuntary Dismissal; Effect.** If the plaintiff fails to prosecute or  
23 to comply with these rules or a court order, a defendant may move  
24 to dismiss the action or any claim against it. Unless the dismissal  
25 order states otherwise, a dismissal under this subdivision (b) and  
any dismissal not under this rule--except one for lack of  
jurisdiction, improper venue, or failure to join a party under Rule  
19--operates as an adjudication on the merits.

26 Id.

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1 Good cause appearing, IT IS HEREBY RECOMMENDED that this action be dismissed  
2 without prejudice for plaintiff's failure to file an opposition to defendants' summary judgment  
3 motion in compliance with local rules and this court's orders. See Fed. R. Civ. P. 41(b).

4 These findings and recommendations will be submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
6 after being served with these findings and recommendations, any party may file written  
7 objections with the court and serve a copy on all parties. The document should be captioned  
8 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
9 objections shall be filed and served within seven days after service of the objections. The parties  
10 are advised that failure to file objections within the specified time may result in waiver of the  
11 right to appeal the district court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: October 18, 2016

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15 DEBORAH BARNES  
16 UNITED STATES MAGISTRATE JUDGE  
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