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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THURMAN LEROY SPENCER,
Plaintiff,
v.
S. PAINTER, et al.,
Defendants.

No. 2:13-cv-02108 KJM DAD P

FINDINGS & RECOMMENDATIONS

On April 10, 2014, plaintiff's complaint was dismissed for failure to allege facts sufficient to state a claim against the named defendants. (ECF No. 18.) By that same order, plaintiff was granted thirty days in which to file an amended complaint. (*Id.*) On May 15, 2015, plaintiff was granted an additional thirty days in which to file an amended complaint. (ECF No. 22.) When plaintiff then failed to file an amended complaint, the undersigned issued findings and recommendations, dated June 25, 2014, recommending that this action be dismissed without prejudice. (ECF No. 24.)

Plaintiff subsequently requested a copy of the docket in this action, and, on January 20, 2015, filed a notice with the court stating that he did not receive the court's May 15, 2015 order. (ECF No. 26.) On January 27, 2015, based on plaintiff's representations, the undersigned vacated the June 25, 2014 findings and recommendations, and granted plaintiff an additional thirty days in which to file an amended complaint. (ECF No. 27.) On March 9, 2015, plaintiff was granted an

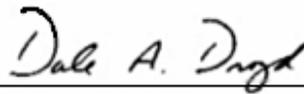
1 additional thirty days in which to file an amended complaint. (ECF No. 29.) On April 8, 2015,
2 plaintiff was granted yet another extension of time until April 19, 2015 to file an amended
3 complaint. (ECF No. 31.) On April 28, 2015, plaintiff was granted an additional thirty days in
4 which to file an amended complaint. (ECF No. 33.) The April 28, 2015 order, however, included
5 a warning to plaintiff that “absent extraordinary circumstances, no motions or requests, such as
6 for appointment of legal counsel, access to legal property, or access to plaintiff’s central file, may
7 be used by plaintiff as a basis to seek an extension of time to file an amended complaint.” (Id. at
8 5.)

9 More than five months have now passed since plaintiff was last ordered to file an
10 amended complaint, yet plaintiff has failed to do so.

11 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
12 prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

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 fourteen days
15 after being served with these findings and recommendations, plaintiff may file written objections
16 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings
17 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
18 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
19 (9th Cir. 1991).

20 Dated: September 29, 2015

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23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE

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