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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TRACY FIDEL ALFORD,
Plaintiff,
v.
LAM DANG, et al.,
Defendants.

No. 2:14-cv-0714-KJM-EFB P

ORDER

Plaintiff, a state prisoner without counsel, has filed a complaint alleging civil rights violations pursuant to 42 U.S.C. § 1983. On February 5, 2018, defendant Clough filed a motion for summary judgment. ECF No. 37. Plaintiff did not file an opposition thereto within the deadline and, on March 9, 2018, the court directed plaintiff to file his opposition within twenty-one days. ECF No. 38. He was warned that his failure to do so might result in dismissal of this case. *Id.* at 2. On April 11, 2018, after plaintiff had failed to comply with the aforementioned order, the court recommended that this action be dismissed for failure to prosecute. ECF No. 39. More than a month later, on May 25, 2018, plaintiff filed an opposition as well as objections to the findings and recommendations. ECF Nos. 42, 43.

There is no question, in light of the foregoing background, that plaintiff’s opposition is untimely. Nevertheless, the court must weigh plaintiff’s obvious failure to adhere to this court’s deadlines against the Ninth Circuit’s position that “a case should, whenever possible, be decided

1 on the merits.” *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). Given that the opposition *has*
2 been filed and defendant’s reply is presumably imminent, it appears that the court will soon have
3 the opportunity to consider the merits of defendant’s motion for summary judgment. For these
4 reasons, the court will: (1) vacate the recommendation that this case be dismissed for failure to
5 prosecute; and (2) direct defendant to file a reply to plaintiff’s opposition within fourteen days
6 from the date this order is filed.

7 It is THEREFORE ORDERED that:

- 8 1. The April 11, 2018 findings and recommendations (ECF No. 39) are VACATED; and
- 9 2. Defendant shall file a reply (if any) to plaintiff’s opposition (ECF No. 43) within
10 fourteen days from the date this order is served. The motion for summary judgment will then
11 stand submitted.

12 DATED: May 31, 2018.


13 EDMUND F. BRENNAN
14 UNITED STATES MAGISTRATE JUDGE
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