

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BERNARD L. SMITH,  
Plaintiff,  
v.  
HAWKINS, et al.,  
Defendants.

No. 2:14-cv-2222-KJM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On July 28, 2015, defendant Hawkins filed a motion to dismiss for failure to state a claim and on the basis of qualified immunity. *See* Fed. R. Civ. P. 12(b)(6). The time for acting passed, and plaintiff failed to file an opposition or otherwise respond to the motion.

On August 31, 2015, the court warned plaintiff that failure to respond to the motion could result in a recommendation that this action be dismissed. *See* Fed. R. Civ. P. 41(b). The court also granted plaintiff a 21-day extension of time to respond. By order filed September 25, 2015, plaintiff was granted an additional extension of thirty days to file his opposition.

The time for acting has once again passed and plaintiff has not filed an opposition, a statement of no opposition, or otherwise responded to the court’s order. Plaintiff has disobeyed this court’s orders and failed to prosecute this action. The appropriate action is dismissal without prejudice.

1           Accordingly, it is hereby RECOMMENDED that this action be dismissed without  
2 prejudice. *See* Fed. R. Civ. P. 41(b); E.D. Cal. Local Rule 110, 183(b).

3           These findings and recommendations are submitted to the United States District Judge  
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
5 after being served with these findings and recommendations, any party may file written  
6 objections with the court and serve a copy on all parties. Such a document should be captioned  
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
8 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
9 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 Dated: November 4, 2015.

11   
12 EDMUND F. BRENNAN  
13 UNITED STATES MAGISTRATE JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28