1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 CALVIN S. LYNN, No. 2:14-cv-2690 WBS KJN P 12 Plaintiff. 13 v. ORDER and FINDINGS & RECOMMENDATIONS 14 CALIFORNIA DEPARTMENT OF CORRECTIONS AND 15 REHABILITATION AND EMPLOYEES, et al., 16 Defendants. 17 18 Plaintiff is a state prisoner, proceeding pro se, in an action brought under 42 U.S.C. § 19 1983. By order dated December 18, 2015, plaintiff was granted thirty days to file an amended 20 complaint, and was cautioned that failure to file an amended complaint would result in a 21 recommendation that this action be dismissed. (ECF No. 27). Plaintiff thereafter filed two 22 motions for appointment of counsel, but did not file an amended complaint. 23 On June 8, 2016, plaintiff was granted an additional thirty days to file his amended 24 complaint. (ECF No. 30.) Plaintiff was advised that the court would not rule on plaintiff's 25 requests for counsel until after he filed his amended complaint. (Id. at 3-4.) Plaintiff was again 26 warned that failure to file an amended complaint within thirty days would result in a 27

recommendation that this action be dismissed. More than forty-five days from that date have now

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1 passed, and plaintiff has not filed an amended complaint, or otherwise responded to the court's 2 order. 3 Because the undersigned recommends that this action be dismissed for lack of prosecution 4 based on plaintiff's failure to file an amended complaint, plaintiff's requests for counsel will be 5 denied as moot. 6 Accordingly, IT IS HEREBY ORDERED that plaintiff's requests for appointment of 7 counsel (ECF Nos. 28 & 29) are denied. 8 IT IS FURTHER RECOMMENDED that this action be dismissed without prejudice for 9 lack of prosecution. See Local Rule 110; Fed. R. Civ. P. 41(b). 10 These findings and recommendations are submitted to the United States District Judge 11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days 12 after being served with these findings and recommendations, any party may file written 13 objections with the court and serve a copy on all parties. Such a document should be captioned 14 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the 15 objections shall be served and filed within fourteen days after service of the objections. The 16 parties are advised that failure to file objections within the specified time may waive the right to 17 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 18 Dated: August 3, 2016 19 20 UNITED STATES MAGISTRATE JUDGE 21 /lynn2690.fta 22 23 24 25 26

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