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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONNIE STERLING LACY,
Plaintiff,
v.
FRED FOULK, et al.,
Defendants.

No. 2:14-cv-2770 JAM AC P

ORDER and
FINDINGS AND RECOMMENDATIONS

On November 18, 2016, remaining defendant T. Young filed a motion to dismiss this action pursuant to Federal Rule of Civil Procedure 12(b)(6), on the ground that plaintiff's evidence attached to his complaint demonstrates that he did not exhaust his administrative remedies, as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). See ECF No. 32.

Plaintiff has not filed a response to defendant's motion. Plaintiff's opposition, or statement of opposition, was due 21 days after service of the motion, or by December 9, 2016. See Local Rule 230(l). Adding 3 days because defendants' motion was served by mail,¹ see Fed. R. Civ. P. 6(d), plaintiff had until December 12, 2016 to submit his brief to prison officials for

¹ December 9, 2016 was 21 days after service of defendant's motion. An additional 3 days are added because defendants served their motion by mail.

1 mailing to the court.² This deadline expired more than a month ago; however, plaintiff has not
2 responded to the motion or otherwise communicated with the court or with defendant, see ECF
3 No. 35.

4 Review of the Inmate Locator website operated by the California Department of
5 Corrections and Rehabilitation indicates that plaintiff is currently incarcerated at California Men's
6 Colony (CMC) in San Luis Obispo.³ Defendant's motion was properly served on plaintiff at
7 CMC. See ECF No. 32 at 3. (However, the docket retains plaintiff's prior institutional address,
8 because he failed to inform the court of his change in address, as required by Local Rule 183(b).)

9 Both the court and defendant informed plaintiff that failure to respond to a motion to
10 dismiss may be deemed a waiver of opposition and warrant dismissal of his action. See ECF No.
11 27 at 3, 27; see also ECF No. 32 at 2. This construction is authorized by the Local and Federal
12 Rules. See Local Rule 230(l) (failure to respond to motion may be deemed a waiver of
13 opposition); Local Rule 110 (authorizing sanctions, including dismissal, for failure to comply
14 with rules and orders of court); see also Fed. R. Civ. P. 41(b) (authorizing dismissal when the
15 plaintiff fails to prosecute or to comply with court rules or orders).

16 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall modify the docket
17 to reflect plaintiff's current incarceration at the California Men's Colony in San Luis Obispo.

18 Further, IT IS HEREBY RECOMMENDED that this action be dismissed without
19 prejudice.

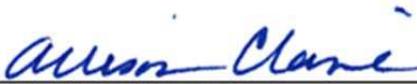
20 These findings and recommendations are submitted to the United States District Judge
21 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
22 days after being served with these findings and recommendations, plaintiff may file written
23

24 ² The "prison mailbox rule" provides that a document is deemed served or filed on the date a
25 prisoner signs the document (or signs the proof of service, if later) and gives it to prison officials
26 for mailing. See *Houston v. Lack*, 487 U.S. 266 (1988) (establishing prison mailbox rule);
Campbell v. Henry, 614 F.3d 1056, 1059 (9th Cir. 2010) (applying the mailbox rule to both state
and federal filings by prisoners).

27 ³ See <http://inmatelocator.cdcr.ca.gov/> This Court may take judicial notice of facts that are
28 capable of accurate determination by sources whose accuracy cannot reasonably be questioned.
Fed. R. Evid. 201; see also *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1224 n.2 (9th Cir. 2004)
("We may take judicial notice of a record of a state agency not subject to reasonable dispute.")

1 objections with the court. Such document should be captioned “Objections to Magistrate Judge’s
2 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
3 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
4 F.2d 1153 (9th Cir. 1991).

5 DATED: January 23, 2017

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8 ALLISON CLAIRE
9 UNITED STATES MAGISTRATE JUDGE
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