UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

KORDY RICE,

Plaintiff,

v.

D. BAUER, et al.,

Defendants.

No. 2:15-cv-236-JAM-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 24, 2015, defendants Bauer, Lanigan, Rodriguez and Thompson filed a motion to dismiss on the grounds that plaintiff failed to exhaust his claim as to defendant Lanigan and that his action is barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). *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 9, 2015, plaintiff was granted an additional extension of thirty days to file his opposition.

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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.

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

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

Dated: October 13, 2015.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE