1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 ERNESTO BERRERA, No. 2:15-cv-0610-KJM-EFB P 12 Plaintiff. 13 FINDINGS AND RECOMMENDATIONS v. 14 J. SIVYER, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 18 U.S.C. § 1983 On August 2, 2018, defendants filed a motion for summary judgment, ECF No. 19 66, and informed plaintiff of the requirements for opposing a motion for summary judgment. See 20 Fed. R. Civ. P. 56; Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998). The time for acting 21 passed, and plaintiff failed to file an opposition or otherwise respond to the motion. 22 On October 2, 2018, the court warned plaintiff that failure to respond to the motion could 23 result in a recommendation that this action be dismissed. See Fed. R. Civ. P. 41(b). The court 24 also granted plaintiff a 21-day extension of time to respond. ECF No. 68. 25 The time for acting has once again passed and plaintiff has not filed an opposition, a 26 statement of no opposition, or otherwise responded to the court's order. Plaintiff has disobeyed 27 this court's orders and failed to prosecute this action. The appropriate action is dismissal without 28 prejudice. 1

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.

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: November 8, 2018.

EĎMUND F. BŘENNAN

UNITED STATES MAGISTRATE JUDGE