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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WESLEY BIRRELL, et al.,  
Plaintiff,  
v.  
ROBERT W. FOX, et al.,  
Defendants.

No. 2:16-cv-1818 DJC CKD P

FINDINGS AND RECOMMENDATIONS

Plaintiff Alford, the only remaining plaintiff in this action, is a state prisoner proceeding pro se with a civil action. On July 12, 2023, defendant Fox, the only remaining defendant, filed a motion for judgment on the pleadings. On August 15, 2023, plaintiff Alford was ordered to file an opposition or a statement of non-opposition to the pending motion within thirty days. In the same order, plaintiff was informed that failure to file an opposition would result in a recommendation that this action be dismissed pursuant to Fed. R. Civ. P. 41(b). The thirty day period has now expired, and plaintiff has not responded to the court’s order.

For the foregoing reasons, IT IS HEREBY RECOMMENDED that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(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)(1). Within fourteen days after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned  
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
3 objections shall be filed and served within fourteen days after service of the objections. The  
4 parties are advised that failure to file objections within the specified time may waive the right to  
5 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: September 26, 2023

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9 CAROLYN K. DELANEY  
10 UNITED STATES MAGISTRATE JUDGE

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