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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKY CLAYBURN,
Plaintiff,
v.
EILYA MAGHADDAM, et al.,
Defendants.

No. 2:16-cv-01995 AC P
ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On June 7, 2017, the court found service appropriate for five of the fourteen defendants named in plaintiff’s complaint. ECF No. 6. Plaintiff was offered the choice of: (1) proceeding with his claims against the five aforementioned defendants by submitting the appropriate service documents; or (2) filing an amended complaint which addressed the problems with his other claims. Id. The former option required plaintiff to submit the required service documents within thirty days of the court’s order and the latter required him to submit an amended complaint within that same deadline. Id. More than thirty days passed and plaintiff did not submit the required service documents, an amended complaint, or a motion for extension of time.

On July 20, 2017, the court notified plaintiff of his failure to meet this deadline and afforded him a final thirty day extension to submit either the required service documents or an


1 amended complaint. ECF No. 9. Plaintiff was warned that if he failed to respond within the time
2 provided, the court would recommend that this action be dismissed for failure to prosecute. Id.
3 Plaintiff has not complied with or sought an extension of time to comply with that order.

4 The Local Rules provide that “[f]ailure of counsel or of a party to comply with . . . any
5 order of the Court may be grounds for the imposition by the Court of any and all sanctions . . .
6 within the inherent power of the Court.” Local Rule 110. The Ninth Circuit has held that
7 “[d]istrict courts have inherent power to control their dockets” and that in “the exercise of that
8 power they may impose sanctions including, where appropriate, default or dismissal.” Thompson
9 v. Housing Authority of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). Defendants cannot be
10 served without plaintiff’s compliance and, consequently, this case cannot move forward.

11 Based on the foregoing, the court concludes that dismissal without prejudice is the most
12 appropriate sanction in this case. It is THEREFORE ORDERED that the Clerk of Court shall
13 assign a district judge to this case to rule on these recommendations and it is RECOMMENDED
14 that this action be DISMISSED without prejudice for failure to prosecute.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, plaintiff may file written objections
18 with the court. Such document should be captioned “Objections to Magistrate Judge’s Findings
19 and Recommendations.” Local Rule 304(d). Plaintiff is advised that failure to file objections
20 within the specified time may waive the right to appeal the District Court’s order. Martinez v.
21 Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 DATED: August 28, 2017

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24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE
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