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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WALTER SHANE LANGSTON,
Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,
Defendant.

No. 2:16-cv-2255 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. On September 28, 2016, the court gave plaintiff thirty days to file an amended complaint, either in this proceeding or in a new proceeding in the Fresno Division of this court, and an application to proceed in forma pauperis or the filing fee. (ECF No. 3.) On October 28, 2016, plaintiff moved for an extension of time to “file [a] grievance with prison administration.” (ECF No. 4.) Plaintiff was advised that the court cannot grant an extension of time to file a grievance with the prison. See Martinez v. Roberts, 804 F.2d 570, 571 (9th Cir. 1986). Plaintiff was further advised that he must exhaust his administrative remedies through the grievance and appeal procedures before he may seek relief in this court. See McKinney v. Carey, 311 F.3d 1198, 1199 (9th Cir. 2002).

///

1 The court liberally construed plaintiff’s motion for an extension of time as also seeking an
2 extension of the deadlines set out in the court’s September 28, 2016 order. Accordingly, on
3 November 9, 2016, the court ordered that plaintiff’s motion for an extension of time (ECF No. 4),
4 construed as an extension of deadlines set by this court, be granted. (ECF No. 5.) Thus, plaintiff
5 was ordered to, within thirty days of the November 9, 2016 order, file an amended complaint, as
6 explained in the September 28 order, and a motion to proceed in forma pauperis or pay the filing
7 fee. (Id.) Plaintiff was warned that his failure to meet this deadline would result in a
8 recommendation that his case be dismissed without prejudice. (Id.)

9 More than thirty days have now passed and plaintiff has not filed an amended complaint,
10 as explained in the September 28 order, and a motion to proceed in forma pauperis or pay the
11 filing fee. Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an
12 action for failure to comply with any order of the court.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260
13 (9th Cir. 1992); see also Local Rule 110.

14 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court randomly assign a
15 District Judge to this action; and

16 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice for
17 failure to prosecute and failure to comply with this court’s orders.

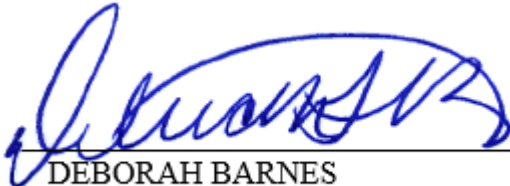
18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, plaintiff may file written objections
21 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings
22 and Recommendations.” Any response to the objections shall be filed and served within fourteen
23 days after service of the objections.

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Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 21, 2016



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

TIM-DLB:10
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