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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JARON LUCIEN,
Plaintiff,
v.
WOODEN,
Defendant.

No. 2:16-cv-2595 WBS DB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges he was subjected to cruel and unusual punishment when he was forced to sit in a holding cage until he urinated for urinalysis testing. On February 5, 2019, defendant filed a motion for summary judgment. On March 15, 2019, when plaintiff had not filed an opposition, or anything for that matter, the court ordered plaintiff to file an opposition within twenty days. (ECF No. 45.) The court warned plaintiff that if he failed to file an opposition, this court would recommend dismissal of this action.

On April 8, 2019, plaintiff requested an extension of time to file an opposition. The court granted plaintiff a 45-day extension of time from the date of the order, April 11, 2019. (ECF No. 47.) After that forty-five time period had passed and plaintiff had not filed an opposition, this court recommended this action be dismissed for plaintiff's failure to comply with court orders. (ECF No. 48.) Plaintiff then filed another motion for an extension of time to file an opposition.


1 (ECF No. 49.) In an order filed July 3, 2019, the court vacated its recommendation that the case
2 be dismissed and granted plaintiff's motion, giving plaintiff thirty additional days to file an
3 opposition. (ECF No. 50.) Plaintiff was warned that if he failed to file a timely opposition, this
4 court would again recommend this action be dismissed. Plaintiff was further advised that he must
5 demonstrate extraordinary circumstances to justify any further extensions of time.

6 Thirty days have passed and plaintiff has failed to file an opposition to defendant's
7 summary judgment motion or otherwise respond to the court's July 3 order. Plaintiff has now had
8 over six months to respond to the summary judgment motion and has failed to do so.

9 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for
10 plaintiff's failure to prosecute and failure to comply with court orders. See E.D. Cal. R. 110; Fed.
11 R. Civ. P. 41.

12 These findings and recommendations will be submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, either party may file written
15 objections with the court. The document should be captioned "Objections to Magistrate Judge's
16 Findings and Recommendations." The parties are advised that failure to file objections within the
17 specified time may result in waiver of the right to appeal the district court's order. Martinez v.
18 Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 Dated: August 9, 2019

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23 DEBORAH BARNES
24 UNITED STATES MAGISTRATE JUDGE

24 DLB:9
25 DLB1/prisoner-civil rights/luci2595.fta fr2