

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ALBERT ATLAS,

 Plaintiff,

 v.

ROBERT FOX, et al.,

 Defendants.

No. 2:17-cv-0286 AC P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983, filed a complaint in this court in February 2017. ECF No. 1. On June 20, 2017, the court dismissed plaintiff’s claim but afforded him thirty days leave to amend. ECF No. 5. On July 28, 2017, the court issued an order noting that plaintiff had neither filed an amended complaint, nor requested an extension of time to do so. ECF No. 8. As a result, the court ordered that plaintiff would be given a final thirty-day extension of time to file an amended complaint. Id. At that time, the court provided notice to plaintiff that if he had not complied at the end of thirty days, it would dismiss his complaint without prejudice. Id.

On August 10, 2017, plaintiff filed objections, stating that he had not received the court’s initial order allowing him to amend his complaint. ECF No. 9. In response, on August 15, 2017, the court ordered that a copy of its initial June 20, 2017 order be sent to plaintiff and gave plaintiff an additional thirty days to submit an amended complaint in accord with it. ECF No. 10.

1 At that time, plaintiff was also informed that if necessary, he could request a reasonable extension
2 of time to file beyond the thirty days. Id.


3 On September 28, 2017, plaintiff filed a motion for extension of time to file an amended
4 complaint listing limited access to the law library and the fact that he had yet to receive
5 documents related to his case as reasons in support of the request. ECF No. 11. The court
6 granted the motion on October 3, 2017, and gave plaintiff an additional thirty days to file. ECF
7 No. 12. More than forty days have passed since plaintiff was granted an extension of time, and
8 plaintiff has not filed an amended complaint or otherwise responded to the court's order.

9 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court randomly assign a
10 United States District Judge to this action.

11 IT IS FURTHER RECOMMENDED that this action be dismissed without prejudice for
12 failure to prosecute. See Fed. R. Civ. P. 41(b); see Local Rule 110 (“[f]ailure of counsel or a
13 party to comply with . . . any order of the Court may be grounds for the imposition by the Court
14 of any and all sanctions . . . within the inherent power of the Court.”); see also Thompson v.
15 Housing Authority of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986) (stating district courts have
16 inherent power to control their dockets, and in so doing, may impose sanctions, including default
17 or dismissal).

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

26 DATED: November 16, 2017.

27
28

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE