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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAMION M. BANKS,  
Plaintiff,  
v.  
KIMBERLY MOULE, et al.,  
Defendants.

No. 2:17-cv-0381 DB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action under 42 U.S.C. § 1983. Plaintiff, who is confined to a wheelchair, contends that while he was incarcerated at the San Joaquin County Jail, defendants discriminated against him based on his disability in violation of the Americans with Disabilities Act. On October 18, 2017, defendants filed a motion to dismiss this case based on plaintiff’s failure to exhaust his administrative remedies. (ECF No. 14.)

When plaintiff did not file a timely opposition to the motion, the court issued an order giving plaintiff an additional thirty days to do so. (ECF No. 18.) Plaintiff was warned that if he failed to file a timely opposition, this court might recommend dismissal of this action.

In a document filed December 20, 2017, plaintiff informed the court that he has been released and that he was “sending a[n] opposition to the motion to dismiss.” (ECF No. 19.) However, by January 5, 2018, when plaintiff had not filed an opposition, the court issued a

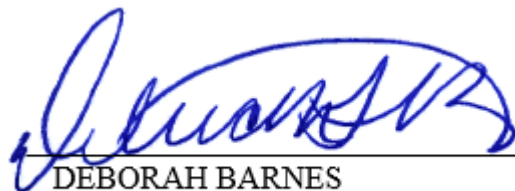
1 second order giving plaintiff one last opportunity to file an opposition to the motion to dismiss.  
2 In that order, plaintiff was warned that if he failed to file an opposition within thirty days, this  
3 court would recommend dismissal of this action. Those thirty days have passed and plaintiff has  
4 not filed an opposition to the motion to dismiss.

5 Because all parties have not consented to the jurisdiction of a magistrate judge, the Clerk  
6 of the Court is HEREBY ORDERED to assign a district judge to this case.

7 For the reasons set forth above, IT IS HEREBY RECOMMENDED that this action be  
8 dismissed without prejudice for plaintiff's failure to prosecute. See E.D. Cal. R. 110; Fed. R. Civ.  
9 P. 41(b).

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

18 Dated: February 22, 2018

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22 DEBORAH BARNES  
23 UNITED STATES MAGISTRATE JUDGE

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