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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RONALD DAVE RENTERIA,
Petitioner,
v.
DAVE DAVEY,
Respondent.

No. 2:17-cv-0784 JAM DB P

FINDINGS AND RECOMMENDATIONS


Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for a writ of habeas corpus under 28 U.S.C. § 2254. In an order filed September 20, 2017, the court found petitioner’s claims should be brought in a civil rights action under 42 U.S.C. § 1983. Petitioner was given the option of amending his pleading to present his due process claim in a civil right complaint or voluntarily dismissing this action. (ECF No. 10.) On October 2, 2017, petitioner filed motion for reconsideration, which the court denied. (ECF Nos. 11, 12.) In the order filed October 6, 2017, the court again advised petitioner that if he wishes to proceed with a civil rights action in this court, he must file his claim on the civil rights complaint form provided to him with the September 20 order. (ECF No. 12.) Petitioner was given twenty days to file a complaint. Petitioner was informed that if he failed to respond to the order, this court would recommend dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 110.

1 More than twenty days have passed and petitioner has not filed a civil rights complaint or
2 otherwise responded to the court's October 6 order.

3 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
4 prejudice to its renewal as a civil rights action.

5 These findings and recommendations will be submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, petitioner may file written
8 objections with the court. The document should be captioned "Objections to Magistrate Judge's
9 Findings and Recommendations." Petitioner is advised that failure to file objections within the
10 specified time may result in waiver of the right to appeal the district court's order. Martinez v.
11 Ylst, 951 F.2d 1153 (9th Cir. 1991). In his objections petitioner may address whether a certificate
12 of appealability should issue in the event he files an appeal of the judgment in this case. See Rule
13 11, Rules Governing § 2254 Cases (the district court must issue or deny a certificate of
14 appealability when it enters a final order adverse to the applicant).

15 Dated: November 13, 2017

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19 DEBORAH BARNES
20 UNITED STATES MAGISTRATE JUDGE
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