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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARTIN ESPINO,
Plaintiff,
v.
JASON SPENCER, et al.,
Defendants.

No. 2:17-cv-02198-DAD-AC (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
THIS ACTION DUE TO PLAINTIFF'S
FAILURE TO PROSECUTE AND OBEY
COURT ORDERS

(Doc. No. 46, 48, 54)

Plaintiff Martin Espino is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On April 21, 2022 defendants filed a motion to compel discovery responses or, in the alternative to dismiss this action (Doc. No. 46.) On June 15, 2022, after plaintiff failed to file a response to that motion the assigned magistrate judge issued an order requiring plaintiff to either file an opposition to that motion or a statement of non-opposition within thirty days. (Doc. No. 48. Plaintiff did not respond to that order within the time provided in any way. On August 2, 2022 defendants filed a motion for summary judgment. (Doc. No. 48.) Again, plaintiff did not respond to the motion and, accordingly, the magistrate judge issued an order requiring plaintiff to

1 show cause in writing why this case should not be dismissed due to his failure to prosecute.
2 (Doc. No. 53.) Plaintiff did not respond to the order too show cause. Accordingly, on November
3 7, 2022, the assigned magistrate judge issued findings and recommendations recommending that
4 this action be dismissed due to plaintiff’s failure to prosecute and failure to obey court orders.
5 (Doc. No. 54.) To date, no objections to the findings and recommendations have been filed, and
6 the time in which to do so has now passed.

7 Since discovery began approximately one and one-half years ago, plaintiff has not
8 produced any discovery in response to defendants’ requests, nor filed a response to a pending
9 motion to compel discovery. (*Id.* at 2.) This is despite the magistrate judge finding that
10 defendants have been very accommodating to plaintiff throughout the proceedings by providing
11 timely service of their discovery requests, attempting to meet-and-confer with plaintiff on
12 multiple occasions, and agreeing to multiple extensions for plaintiff to respond to defendants’
13 discovery requests. (*Id.* at 2–3.) Moreover, on more than one occasion, plaintiff has been warned
14 that his failure to comply with court orders or otherwise participate in this case would result in
15 dismissal of his case. (*Id.* at 3.) For example, on June 15, 2022, plaintiff was ordered to file a
16 response to the instant motion; and, on September 27, 2022, plaintiff was given 30 days to show
17 cause why this matter should not be dismissed for failure to prosecute. (*Id.*) On both occasions,
18 plaintiff was cautioned that his failure to comply with the court’s order might result in dismissal,
19 but plaintiff failed to file a response to either of the court’s orders or otherwise communicate with
20 the court. (*Id.*) The pending findings and recommendations were served on plaintiff at his
21 address of record and contained notice that any objections thereto were to be filed within fourteen
22 (14) days after service.¹ (Doc. No. 54 at 4.)

23 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
24 de novo review of the case. Having carefully reviewed the entire file, the court concludes that the

25 ¹ The service copy of the findings and recommendations was mailed to plaintiff at his address of
26 record and was returned to the court marked as, “Undeliverable, Return To Sender.” Thus,
27 plaintiff was required to file a notice of his change of address with the court no later than January
28 23, 2023. To date, plaintiff has not filed a notice of his change of address or otherwise
communicated with the court. The court notes that the prior orders that plaintiff failed to obey
were successfully served on plaintiff.

1 findings and recommendations are supported by the record and by proper analysis.

2 Accordingly:

- 3 1. The findings and recommendations issued on November 7, 2022 (Doc. No. 54) are
4 adopted in full;
- 5 2. Defendants' motion to dismiss (Doc. No. 46) is granted;
- 6 3. Defendants' motion for summary judgment (Doc. No. 48) is denied as having been
7 rendered moot by this order;
- 8 4. This action is dismissed, without prejudice, due to plaintiff's failure to prosecute
9 this action and failure to obey court orders; and
- 10 5. The Clerk of the Court is directed to close this case.

11 IT IS SO ORDERED.

12 Dated: January 30, 2023

13 *Dale A. Droyd*
14 UNITED STATES DISTRICT JUDGE

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