1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 11 MIKE FRANKLIN, No. 2:17-cv-2277-JAM-EFB PS 12 Plaintiff. 13 v. ORDER AND FINDINGS AND RECOMMENDATIONS 14 COUNTY OF PLACER, et al., 15 Defendants. 16 17 Defendants North Tahoe Fire Protection District, Todd Conradson, and Scott Sedgwick 18 have filed a motion to dismiss pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(6), to 19 strike pursuant to Rule 12(f), and for a more definite statement pursuant to Rule 12(e). ECF No. 20 45. Defendants County of Placer, Edward Bonner, Christopher Cattran, William Doyle, Maria 21 Leftwich, Shane Mathias, Paul Nicholas, Ronald Scott Owens, and Jeffrey Winkler have also 22 moved to dismiss pursuant to Rule 12(b)(6). ECF No. 47. The motions were previously set for 23 hearing on September 19, 2018. ECF Nos. 45, 47. 24 In violation of Local Rule 230(c), plaintiff failed to file an opposition or statement of non-25 opposition to defendants' motions. Accordingly, the hearing the motions was continued to 26 October 31, 2018, and plaintiff was ordered, by no later than October 17, 2018, to file an 27 opposition or statement of non-opposition to the motions and show cause why sanctions should 28 not be imposed for failure to timely file a response to the pending motions. ECF No. 50. Plaintiff 1

was also admonished that failure to comply with that order could result in dismissal of this action for lack of prosecution and/or failure to comply with court orders. *Id*.

On October 15, 2018, instead of filing a response to defendants' motions and the court's order to show cause, plaintiff filed a request for an extension of time to respond to defendants' motions. ECF No. 51. Plaintiff claimed that additional time was needed because he was scheduled to begin a 40-day sentence in the Placer County Jail on October 8, 2018. In light of plaintiff's pro se status and inability to attend the scheduled hearing, the request was granted and the hearing on defendants' motions was continued to December 12, 2018. Plaintiff was directed to file an opposition or statement of non-opposition to the motions by no later than November 28, 2018, and admonished that the court was not inclined to grant any further extensions of time.

The deadline has passed and plaintiff has once again not filed an opposition or statement of non-opposition to the pending motions.

Accordingly, it is hereby ORDERED that the December 12, 2018 hearing on defendants' motions to dismiss and the January 23, 2019 Initial Scheduling Conference are vacated.

Further, it is RECOMMENDED that this action be dismissed for failure to prosecute and to comply with court orders and the court's local rules. See Fed. R. Civ. P. 41(b); E.D. Cal. L.R. 110.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, plaintiff may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: December 4, 2018.

EDMUND F. BRENNAN

UNITED STATES MAGISTRATE JUDGE

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