

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

LLOYD DYLAN JONES,
Plaintiff,
v.
DERIK TREDINNICK, et al.,
Defendants.

No. 2:19-cv-01814 JAM AC PS

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a prisoner proceeding in this action pro se. The action was accordingly referred to the undersigned for pretrial matters by E.D. Cal. R. (“Local Rule”) 302(c)(17). On July 7, 2020, defendants filed a motion to dismiss. ECF No. 22. Plaintiff did not respond. The court issued an order directing plaintiff to show cause within 14 days why his failure to respond should not result in the case being dismissed for failure to prosecute. ECF No. 24. Plaintiff did not respond, although the order was served twice following plaintiff’s notice of change of address. ECF No. 24, Docket Entries on August 18, 2020 and August 19, 2020. On August 19, 2020 defendants filed an amended motion to dismiss, which was taken under submission. ECF Nos. 26, 27. On September 1, 2020, a docket notation was entered that plaintiff had refused delivery of the order to show cause.

Plaintiff’s lack of response to the order to show cause led the court to conclude that plaintiff had abandoned this case, and findings and recommendations were issued recommending

1 that this case be dismissed for failure to prosecute. ECF No. 28. Over two weeks after the
2 findings and recommendations were issued, plaintiff responded to the order to show cause. ECF
3 No. 29. The court, finding that plaintiff's appearance warranted such action, vacated the findings
4 and recommendations and re-instated the motion, making clear that plaintiff's opposition briefing
5 would be due October 5, 2020. ECF No. 30. That deadline has now passed and plaintiff has not
6 submitted his opposition.

7 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed, without
8 prejudice, for lack of prosecution and for failure to comply with the court's order. See Fed. R.
9 Civ. P. 41(b); Local Rule 110, 183(b).

10 Further, it is ORDERED that defendants' motion to dismiss (ECF No. 26) is STRICKEN
11 and removed from the calendar because it is MOOT.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)
14 days after being served with these findings and recommendations, any party may file written
15 objections with the court. Such document should be captioned "Objections to Magistrate Judge's
16 Findings and Recommendations." Local Rule 304(d). Failure to file objections within the
17 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
18 F.2d 1153 (9th Cir. 1991).

19 DATED: October 9, 2020

20 
21 ALLISON CLAIRE
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28