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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVE POSTON,

Plaintiff,

No. CIV S-10-1349 JAM EFB PS

vs.

ROBERT TAMIETTI; JASON JONES;  
CALIFORNIA DEPARTMENT OF  
HIGHWAY PATROL; ERIC WAGNER;  
KEITH ROYAL; DONALD E. LOWN, JR.;  
TAMARA ZUROMSKIS; CLIFFORD  
NEWELL;

Defendants.

ORDER AND  
FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /  
This case, in which plaintiff is proceeding *pro se*, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). On June 28, 2010, defendants County of Nevada, Clifford Newell, Jason Jones, Tamara Zuromskis, Donald Lown, Jr., and Keith Royal’s (the “County defendants”) filed a motion to dismiss plaintiff’s complaint pursuant to Federal Rules of Civil Procedure (“Rule”) 12(b)(1) and 12(b)(6), Dckt. No. 4, and on June 29, 2010, defendant Robert Tamietti filed a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6), Dckt. No. 6. On July 27, 2010, the assigned district judge related this action to two other cases in this district; reassigned this action to the undersigned; and vacated all dates then set in the action. Dckt. No. 11. Thereafter, on August 6 and August 10,

1 2010, defendants re-noticed their motions for hearing on September 15, 2010 before the  
2 undersigned. Dckt. Nos. 12, 14.

3 On September 9, 2010, because plaintiff had not filed either an opposition or a statement  
4 of non-opposition to the motions, the undersigned continued the hearing on the motions to  
5 October 27, 2010; ordered plaintiff to show cause, in writing, no later than October 13, 2010,  
6 why sanctions should not be imposed for his failure to timely file an opposition or a statement of  
7 non-opposition to the pending motions; and directed plaintiff to file an opposition to the motions,  
8 or a statement of non-opposition thereto, no later than October 13, 2010. Dckt. No. 15. The  
9 undersigned further stated that “[f]ailure of plaintiff to file an opposition will be deemed a  
10 statement of non-opposition to the pending motions, and may result in a recommendation that  
11 this action be dismissed for lack of prosecution. *See* Fed. R. Civ. P. 41(b).” *Id.*

12 Although the deadlines have now passed, the court docket reflects that plaintiff has not  
13 filed a response to the order to show cause, an opposition to defendants’ motions, or a statement  
14 of non-opposition to the motions. In light of plaintiff’s failures, the undersigned will recommend  
15 that this action be dismissed for failure to prosecute and that defendants’ motions to dismiss be  
16 denied as moot. *See* Fed. R. Civ. P. 41(b); L.R. 110.

17 Accordingly, IT IS HEREBY ORDERED that the hearing date of October 27, 2010 on  
18 defendants’ motions to dismiss, Dckt. Nos. 12 and 14, is vacated.

19 Further, IT IS HEREBY RECOMMENDED that:

- 20 1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b), based on  
21 plaintiff’s failure to prosecute the action;
- 22 2. Defendants’ motions to dismiss, Dckt. Nos. 12 and 14, be denied as moot; and
- 23 3. The Clerk of Court be directed to close this case.

24 These findings and recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
26 after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned  
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
3 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
4 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: October 18, 2010.

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7 EDMUND F. BRENNAN  
8 UNITED STATES MAGISTRATE JUDGE  
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