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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 KELLY MORGAN,

12 Plaintiff,

13 vs.

14 JAMES TILTON, et al.,

15 Defendants.
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1:08-cv-00233-LJO-GSA-PC

ORDER RESPONDING TO
PLAINTIFF'S OBJECTIONS
(Doc. 85.)

ORDER REQUIRING PLAINTIFF TO
COMPLY WITH COURT'S ORDER
ISSUED ON DECEMBER 6, 2013
(Doc. 84.)

THIRTY DAY DEADLINE TO FILE
OPPOSITION OR STATEMENT OF
NON-OPPOSITION TO DEFENDANT
HERNANDEZ' MOTION TO DISMISS

20 Kelly Morgan ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action
21 pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on
22 February 15, 2008. (Doc. 1.) This case now proceeds on Plaintiff's Third Amended
23 Complaint, filed on July 28, 2011, against defendant Correctional Officer M. Hernandez
24 ("Defendant") for retaliation and obstruction of mail, in violation of the First Amendment.¹
25 (Doc. 45.)
26

27 ¹All remaining claims and defendants were dismissed from this action by the Court on October 17, 2011,
28 based on Plaintiff's failure to state a claim. (Doc. 52.)

1 On December 6, 2013, the court issued an order requiring Plaintiff to file an opposition,
2 or notice of non-opposition, to Defendant's motion to dismiss this case, within thirty days.
3 (Doc. 84.) On December 19, 2013, Plaintiff filed Objections to the court's order. (Doc. 85.)

4 Plaintiff asserts that he received the court's order of December 6, 2013, but he cannot
5 litigate this action because he is presently housed in a psychiatric unit at the prison. Plaintiff
6 requests the court to resolve this case in his favor.

7 Plaintiff's Objections do not comply with the court's order of December 6, 2013.
8 Plaintiff was ordered to file either an "opposition" or "notice of non-opposition" to Defendant's
9 motion to dismiss. Plaintiff shall be granted thirty days in which to comply with the court's
10 order. Should Plaintiff require an extension of time, he should file a motion for extension of
11 time before the thirty day deadline expires. As Plaintiff was forewarned in the court's order,
12 the court will deem any failure to oppose Defendant's' motion to dismiss as a waiver, and
13 recommend that the motion be granted on that basis. See Ghazali v. Moran, 46 F.3d 52 (9th
14 Cir. 1995), cert. denied 516 U.S. 838 (1995) (dismissal upheld even where plaintiff contends he
15 did not receive motion to dismiss, where plaintiff had adequate notice, pursuant to Fed. R. Civ.
16 P. 5(b), and time to file opposition).

17 Accordingly, IT IS HEREBY ORDERED that:

18 1. Within thirty days of the date of service of this order, Plaintiff shall comply with
19 the court's order of December 6, 2013, by filing either an "opposition" or "statement of non-
20 opposition" to the motion to dismiss filed by Defendant on October 30, 2013; and

21 2. If Plaintiff fails to comply with this order, the court will deem the failure to
22 respond as a waiver, and recommend that the motion be granted on that basis.

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26 IT IS SO ORDERED.

27 Dated: December 31, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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