

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

BERNARD C. HUGHES,

CASE NO. 1:11-cv-00110-AWI-GBC (PC)

Plaintiff,

FINDINGS AND RECOMMENDATION TO  
DISMISS ACTION FOR FAILURE TO STATE A  
CLAIM

v.

ROBERT BRUNER,

(Doc. 15; Doc. 18)

Defendant.

FOURTEEN-DAY DEADLINE

Plaintiff Bernard Hughes ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 21, 2011. Doc. 1. On April 22, 2011, the Court dismissed Plaintiff's complaint for failure to state a claim and gave Plaintiff leave to amend. Doc. 13. On May 12, 2011, Plaintiff filed the first amended complaint. Doc. 15. On July 18, 2012, the Court filed findings and recommendations recommending to dismiss the action for failure to state a claim. Doc. 16. On August 31, 2012, Plaintiff filed objections stating that he was trying to allege a retaliation claim. Doc. 17. On November 11, 2012, the Court vacated its original findings and recommendation filed on July 18, 2012, re-screened Plaintiff's amended complaint based on retaliation and dismissed with leave to amend for failure to state a claim. Doc. 18.

In the Court's dismissal filed on July 18, 2012, Plaintiff was warned that if he failed to file an amended complaint in compliance with the order, this action would be dismissed, with prejudice, for failure to state any claims. More than twenty-one days have passed and Plaintiff has not

1 complied with or otherwise responded to the Court's order. As a result, there is no pleading on file  
2 which sets forth any claims upon which relief may be granted.

3 Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), the Court HEREBY  
4 RECOMMENDS that:

- 5 1. this action be DISMISSED, with prejudice, based on Plaintiff's failure to state any  
6 claims upon which relief may be granted (Doc. 15; Doc. 18); and
- 7 2. The Clerk's Office is directed to enter judgment against Plaintiff.

8  
9 These Findings and Recommendations will be submitted to the United States District  
10 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
11 **fourteen (14) days** after being served with these Findings and Recommendations, plaintiff may file  
12 written objections with the court. The document should be captioned "Objections to Magistrate  
13 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections  
14 within the specified time may waive the right to appeal the District Court's order. *Martinez v.*  
15 *Ylst*, 951 F.2d 1153 (9th Cir. 1991).

16  
17 IT IS SO ORDERED.

18 Dated: December 14, 2012

19   
UNITED STATES MAGISTRATE JUDGE