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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 BERNARD C. HUGHES, ) Case No.: 1:11-cv-00110-AWI-SAB (PC)  
12 Plaintiff, )  
13 v. ) ORDER DECLINING TO ADOPT FINDINGS  
14 ROBERT BRUNER, et al., ) AND RECOMEMNDATION, GRANTING  
15 Defendants. ) PLAINTIFF ONE LAST OPPORTUNITY TO FILE  
16 ) A FOURTH AMENDED COMPLAINT TO SET  
FORTH HIS CLAIM OF RETALIATION  
[ECF No. 34]

17 Plaintiff Bernard C. Hughes is appearing pro se and in forma pauperis in this civil rights action  
18 pursuant to 42 U.S.C. § 1983.

19 On December 24, 2013, the Magistrate Judge issued Findings and Recommendations to  
20 dismiss Plaintiff's second amended complaint, without leave to amend, for failure to state a cognizable  
21 claim. The Court found that Plaintiff's amended complaint alleged nothing more than the mere fact  
22 that Defendant Bruner issued a false rules violation report, which is insufficient to give rise to a  
23 cognizable constitutional violation. Because Plaintiff was previously provided notification of the  
24 deficiencies, further leave to amend was not warranted.

25 On January 23, 2014, Plaintiff filed objections to the Findings and Recommendations. In his  
26 objections, Plaintiff contended that the false charges set forth in the second amended complaint were  
27 in retaliation for Plaintiff having filed a grievance. On February 5, 2014, the Magistrate Judge vacated  
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1 the Findings and Recommendations and granted Plaintiff the opportunity to file a third amended  
2 complaint to clarify his claim of retaliation.

3 Plaintiff filed a third amended complaint on March 10, 2014. On March 12, 2014, the  
4 Magistrate Judge again issued a Findings and Recommendation to dismiss the third amended  
5 complaint for failure to state a cognizable claim. More specifically, it was noted that

6 Plaintiff merely contends that he was not provided an alternate pair of underwear,  
7 despite the fact that he had filed a grievance to accommodate such request. Plaintiff  
8 fails to allege any facts that elevate his allegations of retaliation to the level of a  
9 plausible claim. The denial of an inmate's appeal, does not alone imply retaliation.  
10 There are no facts alleging that Defendant Robert Bruner took adverse action against  
11 Plaintiff because of his protected activity in filing an inmate grievance, or that any  
12 action did not reasonably advance a legitimate correctional goal. Accordingly, Plaintiff  
13 fails to state a cognizable claim for relief.

14 (F&R, at 4, ECF No. 34.)

15 Plaintiff filed objections to the Findings and Recommendations on April 14, 2014, and  
16 contends that he is attempting to pursue a claim of retaliation against Defendant Bruner for issuing  
17 false charges resulting in a moderate rules violation simply because Plaintiff filed an inmate grievance  
18 against him. Plaintiff submits that he "will again try to rectify that problem, if this court allows it, and  
19 begging its indulgence." (Objections at 11, ECF No. 35.)

20 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de*  
21 *novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's objections,  
22 the Court will decline to adopt the Findings and Recommendations and allow Plaintiff one last  
23 opportunity to amend the claim by filing a fourth amended complaint. Plaintiff is advised again that  
24 he must make clear to both the Court and Defendant the claim for which he is seeking liability and  
25 relief. It is not the duty of the Court to weed through the entire complaint and/or exhibits to determine  
26 the nature of Plaintiff's claim, rather, the duty lies solely upon Plaintiff. Indeed, Plaintiff should  
27 utilize the complaint form provided along with this order, and clearly and succinctly set forth his claim  
28 for relief in the Statement of Claim section IV of the standard complaint form. Plaintiff's fourth  
amended complaint should be brief, Fed R. Civ. P. 8(a), but must state what each named defendant did  
that led to the deprivation of Plaintiff's constitutional or other federal rights. See Ashcroft v. Iqbal,

1 556 U.S. 662, 678 (2009). In addition, Plaintiff may not change the nature of this suit by adding new,  
2 unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).  
3 Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to relief above  
4 the speculative level....” Bell Atlantic Corp. v. Trowmbly, 550 U.S. 544, 555 (2007).

5 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint,  
6 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997), overruled in part on other grounds,  
7 Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012); King v. Atiyeh, 814 F.2d 565, 567 (9th  
8 Cir. 1987), and must be “complete in itself without reference to the prior or superseded pleading.”  
9 Local Rule 220.

10 Accordingly,

11 IT IS HEREBY ORDERED that:

- 12 1. The Court DECLINES TO ADOPT the Findings and Recommendations, issued March  
13 12, 2014;
- 14 2. Plaintiff is granted thirty (30) days from the date of service of this order in which to file  
15 his fourth amended complaint; and
- 16 3. If Plaintiff fails to comply with this order, the Court will reinstate the March 12, 2014,  
17 Findings and Recommendations and dismiss this case without leave to amend for failure to state a  
18 cognizable claim.

19  
20 IT IS SO ORDERED.

21 Dated: April 29, 2014

  
22 SENIOR DISTRICT JUDGE