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

KEVIN KING,

Plaintiff,

No. CIV S-06-0065 LKK GGH P

vs.

CDCR, et al.,

Defendant.

ORDER &

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Plaintiff is a former state prisoner, proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983.

On December 17, 2008, the court issued findings and recommendations granting defendants' motion for summary judgment filed October 3, 2008, as plaintiff failed to file an opposition and did not appear at the November 20, 2008, hearing. On December 5, 2008, defendants' filed a motion to dismiss for lack of prosecution and the hearing was set for January 15, 2009. Plaintiff filed no opposition.

On the January 15, 2009, hearing date for the motion to dismiss for lack of prosecution, an attorney appeared for defendants and plaintiff appeared. Plaintiff explained that he was unable to respond to the motions and appear in court due to grief from the one year

1 anniversary of the death of his son, on November 16, 2007. Plaintiff wishes to continue with the  
2 prosecution of this case.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The December 17, 2008, findings and recommendations are vacated;

5 2. Plaintiff is ordered to respond to the October 3, 2008, motion for summary  
6 judgement by February 4, 2009;

7 3. Defendants'<sup>1</sup> have until February 11, 2009 to reply to plaintiff's response.

8 IT IS HEREBY RECOMMENDED that:

9 1. Defendant's motion to dismiss for lack of prosecution is denied.

10 These findings and recommendations are submitted to the United States District  
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
12 days after being served with these findings and recommendations, any party may file written  
13 objections with the court and serve a copy on all parties. Such a document should be captioned  
14 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections  
15 shall be served and filed within ten days after service of the objections. The parties are advised  
16 that failure to file objections within the specified time may waive the right to appeal the District  
17 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: January 20, 2009

/s/ Gregory G. Hollows

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UNITED STATES MAGISTRATE JUDGE

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22 GGH: AB  
king0065.vac  
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<sup>1</sup> All defendants in the motion for summary judgment.