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

HAROLD TAYLOR,

Plaintiff,

CIV. NO. S-09-0024 JAM CKD PS

vs.

STATE OF CALIFORNIA DEPARTMENT  
OF CORRECTIONS, et al.,

Defendants.

ORDER AND  
FINDINGS AND RECOMMENDATIONS

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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 July 26 and August 10, 2011, defendants filed motions for summary judgment. The motions were set for hearing on September 14, 2011.

On September 6, 2011, because plaintiff had not filed either an opposition or a statement of non-opposition to the motions, the undersigned continued the hearing on the motions to October 19, 2011; ordered plaintiff to show cause, in writing, no later than September 28, 2011, why sanctions should not be imposed for failure to timely file an opposition or a statement of non-opposition to the pending motions; and directed plaintiff to file an opposition to

1 the motions, or a statement of non-opposition thereto, no later than September 28, 2011.<sup>1</sup> The  
2 undersigned further stated that “[f]ailure of plaintiff to file an opposition will be deemed a  
3 statement of non-opposition to the pending motion, and may result in a recommendation that this  
4 action be dismissed for lack of prosecution. See Fed. R. Civ. P. 41(b).” Id.

5           Although the deadlines have now passed, the court docket reflects that plaintiff  
6 has not filed a response to the order to show cause, an opposition to the motions, or a statement  
7 of non-opposition to the motions. In light of plaintiff’s failures, the undersigned will recommend  
8 that this action be dismissed for failure to prosecute the action and for failure to comply with  
9 court orders and Local Rules, and that defendants’ motions to dismiss and to strike be denied as  
10 moot. See Fed. R. Civ. P. 41(b); L.R. 110.

11           Accordingly, IT IS HEREBY ORDERED that:

12           1. The hearing date of October 19, 2011, on defendants’ motions for summary  
13 judgment, is vacated; and

14           IT IS HEREBY RECOMMENDED that:

15           1. This action be dismissed pursuant to Federal Rule of Civil Procedure 41(b),  
16 based on plaintiff’s failure to prosecute the action and to comply with court orders and Local  
17 Rules;

18           2. Defendants’ motions to dismiss and to strike (dkt. nos. 41, 44) be denied as  
19 moot; and

20           3. The Clerk of Court be directed to close this case.

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

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24           <sup>1</sup> Although it appears from the docket that plaintiff’s copy of the order and prior orders  
25 issued since August 3, 2011 have been returned, plaintiff was properly served. It is the plaintiff’s  
26 responsibility to keep the court apprised of his current address at all times. Pursuant to Local  
Rule 183(b), service of documents at the record address of the party is fully effective.

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. Martinez v.  
4 Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 Dated: September 30, 2011

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8 CAROLYN K. DELANEY  
9 UNITED STATES MAGISTRATE JUDGE

8 <sup>4</sup>  
9 taylor.nop.57

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