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

10 GEORGE R. PALOMAR II,

11 Plaintiff,

No. 2:10-cv-3477 JAM CKD P

12 vs.

13 BRADLEY D. HARTUNG, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff is a state prisoner, proceeding pro se and in forma pauperis, who seeks
17 relief pursuant to 42 U.S.C. § 1983. On November 6, 2012, plaintiff was granted an additional
18 30 days to file and serve a second amended complaint. (Dkt. No. 22.) On November 19, 2012,
19 plaintiff filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and a motion to
20 “change the vehicle” of his litigation to a petition for writ of habeas corpus.¹ (Dkt. No. 23, 24.)
21 The court construes this as a motion to dismiss the instant civil rights action and re-file the
22 petition in a new action brought pursuant to § 2254. See Fed. R. Civ. P. 41(a).

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25 ¹ See April 12, 2012 screening order, stating that: “If plaintiff wishes to challenge the
26 Board’s denial of parole by arguing that the basic requirements of due process under Swarthout
(Dkt. No. 11 at 5.)”

1 In accordance with the above, IT IS HEREBY ORDERED THAT:

2 1. Plaintiff's motion to change the case to a petition for writ of habeas corpus
3 (Dkt. No. 23) is granted;

4 2. This action is dismissed.

5 3. The Clerk of Court shall docket the petition for writ of habeas corpus (filed in
6 this action as Dkt. No. 24) in a new action pursuant to 28 U.S.C. § 2254.

7 Dated: November 27, 2012

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9 CAROLYN K. DELANEY
10 UNITED STATES MAGISTRATE JUDGE

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