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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BERNARD C. HUGHES,  
Plaintiff,  
v.  
STATE OF CALIFORNIA DEPT OF  
CORRECTIONS AND  
REHABILITATION, et al.,  
Defendants.

No. 2:11-cv-00530 GEB DAD P

FINDINGS AND RECOMMENDATIONS

On September 17, 2013, defendants Awatani, Fong and Street filed a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b) for failure to exhaust administrative remedies, 12(b)(6) for failure to state a claim for relief, and 18(a) for including claims and events which were unrelated to the original complaint. On November 26, 2013, defendant Malet filed a notice joining in defendants' September 17, 2013 motion to dismiss. Plaintiff has not opposed the motion despite the court's order filed on October 31, 2013, providing plaintiff with additional time to file his opposition to the motion to dismiss. (ECF No. 47.)

Local Rule 230(1) provides in part: "Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion . . . ." On July 11, 2013, plaintiff was advised of the requirements for filing an opposition to a motion to dismiss and that failure to oppose such a motion may be

1 deemed a waiver of opposition to the motion. (ECF No. 36 at 3-4.) Plaintiff was provided this  
2 same advice again in the court's October 31, 2013 order.

3 Local Rule 110 provides that failure to comply with the Local Rules "may be grounds for  
4 imposition of any and all sanctions authorized by statute or Rule or within the inherent power of  
5 the Court." In the orders filed July 11, 2013 and October 31, 2013, plaintiff was advised that  
6 failure to comply with the Local Rules may result in a recommendation that the action be  
7 dismissed.

8 Accordingly, IT IS HEREBY RECOMMENDED that:

9 1. Defendants Awatani, Fong, Street and Malet's September 17, 2013 motion to dismiss  
10 (ECF No. 43) be granted; and

11 2. This action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil  
12 Procedure.

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

20 Dated: January 27, 2014

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23 DALE A. DROZD  
24 UNITED STATES MAGISTRATE JUDGE

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