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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES ARMSTEAD,  
Plaintiff,  
v.  
TIM V. VIRGA, et al.,  
Defendants.

No. 2: 11-cv-1054 JAM KJN P

FINDINGS & RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the amended complaint as to the following claims against defendants Virga and Mini: 1) racially based lockdown in violation of the Equal Protection Clause; 2) denial of access to a telephone; 3) denial of access to cleaning supplies.

On July 12, 2013, defendants filed a motion for judgment on the pleadings. Plaintiff did not oppose the motion. Accordingly, on September 20, 2013, the undersigned recommended that defendants' motion be granted.

On October 10, 2013, plaintiff filed objections to the September 20, 2013 findings and recommendations. Plaintiff alleged that he could not respond to court orders due to inadequate law library access. On October 17, 2013, plaintiff was granted thirty days to file either his opposition to defendants' motion for judgment on the pleadings or a motion for law library access. Thirty days passed and plaintiff did not respond to the October 17, 2013 order.

1 Accordingly, for the following reasons, this action should be dismissed.

2 Local Rule 230(l) provides in part: “Failure of the responding party to file written  
3 opposition or to file a statement of no opposition may be deemed a waiver of any opposition to  
4 the granting of the motion ....” On September 22, 2011, plaintiff was advised of the requirements  
5 for filing an opposition to the motion and that failure to oppose such a motion may be deemed a  
6 waiver of opposition to the motion.


7 Local Rule 110 provides that failure to comply with the Local Rules “may be grounds for  
8 imposition of any and all sanctions authorized by statute or Rule or within the inherent power of  
9 the Court.” In the order filed September 22, 2011, plaintiff was advised the failure to comply  
10 with the Local Rules may result in a recommendation that this action be dismissed.

11 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without  
12 prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

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. The document should be captioned “Objections to Magistrate Judge’s Findings  
17 and Recommendations.” Plaintiff is advised that failure to file objections within the specified  
18 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153  
19 (9th Cir. 1991).

20 Dated: November 25, 2013

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE