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

KENNETH GENE MONTGOMERY,

Plaintiff,

No. CIV S-11-3304 GGH P

vs.

SGT. BROOKS, et al.

Defendants.

ORDER

_____ /

Plaintiff proceeds in this action with counsel pursuant to 42 U.S.C. § 1983. Plaintiff has filed a notice of non-opposition to: (1) the motion to dismiss defendants High Desert State Prison (“HDSP”), California Department of Corrections and Rehabilitation (“CDCR”), and the State of California (the “State”) (collectively, the “State Defendants”), pursuant to the Eleventh Amendment (Doc. No. 19), made by defendants Brooks, Parker,¹ and the State Defendants; and (2) defendants Shaw and McDonald’s motion to dismiss without leave to amend for failure to state a claim against defendants (Doc. No. 29).

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¹ As noted in this court’s June 29, 2012 order, the action is stayed against defendant Parker pursuant to 11 U.S.C. § 362. See Doc. No. 30.

1 On April 19, 2012, this court issued an Order re Consent or Request for
2 Reassignment, directing that, within 30 days, the parties consent or decline to the jurisdiction of
3 a magistrate judge pursuant to 28 U.S.C. § 636(c). On May 22, 2012, plaintiff responded, and
4 has consented to the jurisdiction of this court. See Doc. Nos. 26. On May 24, 2012, defendants
5 Brooks, Parker, CDCR, HDSP, and the State also responded, and have also consented to this
6 court's jurisdiction. See Doc. No. 27. However, defendants Shaw and McDonald have not
7 responded to the court's April 19, 2012 order. As a threshold matter, before the court may
8 adjudicate the pending motions, it must determine whether all defendants consent to proceed
9 before the undersigned.²

10 In accordance with the above, IT IS HEREBY ORDERED that, within seven (7)
11 days of the filing date of this order, defendants Shaw and McDonald respond to the court's
12 April 18, 2012 Order re Consent or Request for Reassignment. See Doc. No. 18.

13 DATED: July 11, 2012

14 /s/ Gregory G. Hollows
15 UNITED STATES MAGISTRATE JUDGE

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23 ² The court notes that plaintiff's notice of non-opposition reads that plaintiff does not
24 oppose defendants' motion for dismissal as to defendant Brooks. See Doc. No. 31 at 2:1-2.
25 While defendant Brooks is named as a movant on defendants' April 27, 2012 motion to dismiss
26 the State defendants, the court is not aware of any outstanding motion to dismiss plaintiff's
claims against defendant Brooks. To the extent plaintiff no longer wishes to proceed on his
claims against defendant Brooks, plaintiff is referred to the procedures for dismissal outlined at
Federal Rule of Civil Procedure 41.