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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BURCH MICHAEL BOWEN,
Plaintiff,
v.
MATTHEW CATE, et al.,
Defendants.

No. 2:12-cv-1519 MCE AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On December 1, 2014, defendants filed a motion to dismiss Counts I and III of the second amended complaint.¹ ECF No. 54. Plaintiff was granted two extensions of his time to respond (ECF Nos. 56, 59), and on April 30, 2015, plaintiff was ordered to file an opposition or a statement of non-opposition to the pending motion within twenty-one days. ECF No. 60. In the same order, plaintiff was informed that failure to file an opposition would result in a recommendation that the claims would be dismissed without prejudice for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). Id. The twenty-one-day period has now expired, and plaintiff has not responded to the court’s order.

¹ Count I is a claim for prospective injunctive relief against defendant Beard in his official capacity. ECF No. 23 at 9-10. Count III is a state law claim under the California Torts Claim Act. Id. at 11-12.

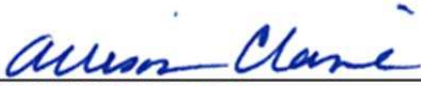
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For the foregoing reasons, IT IS HEREBY RECOMMENDED that:

1. Plaintiff’s claims for prospective injunctive relief and his state law claims be dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).
2. Defendant Beard be dismissed from this action because no claims remain against him.
3. Defendants Boparai, Carrick, Chapnick, Conanan, McAlpine, McElroy, Milliner, Shadday, and Swarthout be ordered to answer the remaining claims within thirty days from the date of the district judge’s review and adoption of the instant findings and recommendation.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be filed and served within fourteen days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: June 2, 2015



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE