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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

NATHAN GATES,  
  
Plaintiff,  
  
v.  
  
NATIONAL RAILROAD PASSENGER  
CORPORATION dba AMTRAK, a  
corporation, and DOES 1 through 30,  
inclusive,  
  
Defendant.

No. 2:17-cv-1615-TLN-EFB PS

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Defendant filed a motion to dismiss the complaint’s request for punitive damages pursuant to Federal Rule of Civil Procedure 12(b)(6), and noticed the motion for hearing on September 20, 2017. ECF No. 4. Plaintiff failed to timely file an opposition or statement of non-opposition to the motion. Accordingly, the hearing was continued to November 22, 2017, and plaintiff was ordered, by no later than November 8, 2017, to file an opposition or statement of non-opposition to the motion and to show cause why sanctions should not be imposed for his failure to timely file an opposition or statement of non-opposition. ECF No. 6. Plaintiff was also admonished that failure to file an opposition would be deemed a statement of non-opposition to the granting of defendant’s motion and could result in a recommendation that this action be dismissed for lack of prosecution and/or failure to comply with court orders and the court’s local rules. *Id.*

1 The deadline has passed and plaintiff has not filed an opposition or statement of non-  
2 opposition to the pending motion, nor has he responded to the court's order to show cause.

3 Accordingly, it is hereby ORDERED that the November 22, 2017 hearing on defendant's  
4 motion to dismiss and the January 17, 2018 Initial Scheduling Conference are vacated.

5 Further, it is RECOMMENDED that this action be dismissed for failure to prosecute and  
6 to comply with court orders and the court's local rules. *See* Fed. R. Civ. P. 41(b); Cal. E.D. L.R.  
7 110.

8 These findings and recommendations are submitted to the United States District Judge  
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
10 after being served with these findings and recommendations, plaintiff may file written objections  
11 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
12 and Recommendations." Failure to file objections within the specified time may waive the right  
13 to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998);  
14 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: November 15, 2017.

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17 EDMUND F. BRENNAN  
18 UNITED STATES MAGISTRATE JUDGE  
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