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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALLAN H. F. PALMER,

Plaintiff,

v.

CHARLES H. PALMER, et al.,

Defendants.

Case No. CV 16-05247-JLS (DFM)

**Order Accepting in Part Report and
Recommendation of United States
Magistrate Judge**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the First Amended Complaint (“FAC”), the records on file, and the Report and Recommendation of the assigned United States Magistrate Judge. Further, the Court has engaged in a *de novo* review of those portions of the Report and Recommendation to which objections have been made. The Court accepts the findings and recommendation of the Magistrate judge, except the Magistrate Judge’s determination that the First Amended Complaint should be dismissed without leave to amend.

The Report and Recommendation directed Plaintiff to advise the Court if he believed he could amend the FAC to make allegations to cure the deficiencies outlined in the Report and Recommendation. (Doc. 9 at 9 n.4 (“If Plaintiff believes he can amend the FAC to make allegations sufficient to state a [claim], he should say so in

1 his objection to this Report and Recommendation.”).) Notably, the Report and
2 Recommendation does not require that Plaintiff outline what those allegations would
3 be. In response, in his Objection to the Report and Recommendation, Plaintiff
4 indicated he believes he can make allegations sufficient to state a claim if he is given
5 the opportunity to amend the FAC. (Doc. 10 at 9-10.) Although Plaintiff does not
6 state with specificity what allegations he would make, he was directed only to state if
7 he believed he could amend to cure the identified deficiencies.

8 Therefore, the Court dismisses the present action *without* prejudice and *with*
9 leave to amend. Plaintiff shall file his Second Amended Complaint no later than thirty
10 (30) days of the entry of this Order. Failure to do so will result in dismissal of the
11 present action *with* prejudice.

12 **IT IS SO ORDERED.**

13 **DATED:** July 26, 2017

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16 The Hon. Josephine L. Staton
17 United States District Judge
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