

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

XAVIER NAILING,
Plaintiff,
v.
DONNA NAVARRO, et al.,
Defendants.

Case No. 2:19-cv-08897-AB-JC

ORDER ACCEPTING FINDINGS,
CONCLUSIONS, AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

[DOCKET NO. 62]

The Court has conducted the review required by 28 U.S.C. § 636 and accepts the findings, conclusions and recommendation of the Magistrate Judge reflected in the November 18, 2021 Report and Recommendation of United States Magistrate Judge (“Report and Recommendation”).

IT IS HEREBY ORDERED:

1. The Request for Judicial Notice filed by Defendants Donna Navarro and Carlos Van Natter (“Moving Defendants”) is granted;
2. The Moving Defendants’ Motion to Dismiss is granted to the extent it seeks dismissal of the Second Amended Complaint for failure to state a claim;

///

///

- 1 4. The Second Amended Complaint is dismissed with leave to amend;
2 5. Within fourteen (14) days of the date of this Order, plaintiff shall do
3 one of the following:
4 (a) file a Third Amended Complaint which cures the pleading defects
5 identified in the Report and Recommendation;¹
6 (b) file a Notice of Dismissal which will result in the voluntary
7 dismissal of this action without prejudice; or
8 (c) file a Notice of Intent to Stand on Second Amended Complaint,
9 indicating plaintiff’s intent to stand on the Second Amended
10 Complaint despite the pleading defects described in the Report and
11 Recommendation, which may result in the dismissal of this action in
12 its entirety based upon such defects.

13 **Plaintiff is cautioned that his failure timely to file a Third Amended**
14 **Complaint, a Notice of Dismissal, or a Notice of Intent to Stand on Second**
15 **Amended Complaint may be deemed his admission that amendment is futile,**
16 **and may result in the dismissal of this action with or without prejudice on the**
17 **grounds set forth in the Report and Recommendation, on the ground that**
18 **amendment is futile, for failure diligently to prosecute and/or for failure to**
19 **comply with this Order.**

21 ¹Any Third Amended Complaint must: (a) be labeled “Third Amended Complaint”;
22 (b) be complete in and of itself and not refer in any manner to the original, the First Amended, or
23 the Second Amended Complaint – *i.e.*, it must include all claims on which plaintiff seeks to
24 proceed (Local Rule 15-2); (c) contain a “short and plain” statement of each claim for relief
25 “showing that [plaintiff] is entitled to relief” (Fed. R. Civ. P. 8(a)); (d) make each allegation
26 “simple, concise and direct” and contain factual allegations in clear short, concise, numbered
27 paragraphs, each “limited as far as practicable to a single set of circumstances” (Fed. R. Civ. P.
28 8(d)(1), 10(b)); (e) set forth clearly the sequence of events giving rise to the claim(s) for relief;
(f) reflect which claims are brought against which defendant(s) in which capacity and allege
specifically what each defendant did and how that individual’s conduct specifically violated
plaintiff’s civil rights; and (g) not add defendants or claims that are not related to the claims
asserted in the original, the First Amended Complaint, and the Second Amended Complaint.

1 IT IS FURTHER ORDERED that the Clerk serve copies of this Order on
2 plaintiff and counsel for defendants who have appeared in this action.

3 IT IS SO ORDERED

4
5 

6 DATED: January 10, 2022

7
8

9 HONORABLE ANDRE BIROTTE JR.
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28