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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DONALD E. BOOKER,

Plaintiff,

V.

D. LEE, et al.,

Defendants.

Case No. 2:22-cv-07258-SPG-JC

ORDER (1) ACCEPTING IN PART AND DECLINING TO ACCEPT IN PART, FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE; (2) AFFORDING PLAINTIFF LEAVE TO AMEND; AND (3) DENYING MOTION FOR LEAVE TO FILE AMENDED COMPLAINT AS MOOT

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaint, the Motion to Dismiss ("Motion") filed by Defendants D. Lee, J. Garibay, R. Castellanos, and J. Williams ("Defendants"), and all of the records herein, including the October 2, 2023 Report and Recommendation of United States Magistrate Judge ("Report and Recommendation"). The Report and Recommendation correctly notes that Plaintiff did not file an Opposition to the Motion and recommends that the Court grant the Motion because the Complaint violates Rule 8 of the Federal Rules of Civil Procedure and fails to state a claim for relief, and that the Court dismiss this action without prejudice for failure to prosecute and to comply with a court order in light of Plaintiff's failure to respond to the Motion despite having been ordered to do so and having been cautioned that such failure may result in

dismissal of this action. Plaintiff did not file any objections to the Report and Recommendation. However, on November 13, 2023, Plaintiff filed a Motion for Leave to File Amended Complaint ("Motion to Amend"), suggesting that he has not in fact abandoned this action and instead wishes to proceed.

This Court agrees with and adopts the facts and procedural history set out in the Report and Recommendation, as well as its analysis, findings, and conclusions relative to the deficiencies in the Complaint, and accordingly also accepts and adopts the Report and Recommendation, to the extent it recommends that the Court grant the Motion and dismiss the Complaint. However, in light of Plaintiff's expression of interest in pursuing this action and the otherwise applicable liberal amendment standards and standards governing consideration of matters brought by self-represented individuals, the Court deems it appropriate to afford Plaintiff leave to amend and accordingly declines to adopt the Report and Recommendation, insofar as it recommends dismissal of the action based on Plaintiff's failure to prosecute and to comply with a court order.

## IT IS THEREFORE ORDERED:

- 1. The Motion is granted and the Complaint is dismissed with leave to amend.
- 2. Within twenty-one (21) calendar days of the date of this Order, Plaintiff must do one of the following:
  - a) File a First Amended Complaint which cures the pleading defects set forth in the Report and Recommendation; or
- b) File a Notice of Dismissal which will result in the voluntary dismissal of this action without prejudice; or
- c) File a Notice of Intent to Stand on Complaint, indicating
  Plaintiff's intent to stand on the original Complaint despite the pleading defects set forth
  in the Report and Recommendation, which may result in the dismissal of this action in its
  entirety based upon such defects.

Plaintiff is cautioned that Plaintiff's failure timely to file a First Amended Complaint, a Notice of Dismissal, or a Notice of Intent to Stand on Complaint may be

deemed Plaintiff's admission that amendment is futile, and may result in the dismissal of this action with or without prejudice based on the deficiencies in the Complaint identified in the Report and Recommendation, based on the ground that amendment is futile, and/or based on Plaintiff's failure diligently to prosecute and/or failure to comply with this Order.

4. In light of the foregoing, Plaintiff's Motion to Amend is moot and is denied as such.

IT IS SO ORDERED.

Dated: March 26, 2024

HON. SHERILYN P. GARNETT U.S. DISTRICT COURT JUDGE