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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

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|---|---|-------------------------------|
| MICHAEL J. JONES, |) | Case No. 1:09-cv-2004-LJO-JLT |
| |) | |
| Plaintiff, |) | FINDINGS AND RECOMMENDATIONS |
| |) | DISMISSING COMPLAINT WITH |
| vs. |) | PREJUDICE |
| |) | |
| BAKERSFIELD POLICE OFFICER |) | |
| THEODORE KING AND BAKERSFIELD |) | |
| POLICE OFFICER SCOTT DREWERY, sued |) | |
| in their individual and in their official |) | |
| capacities, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

Plaintiff is proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 302 and 304.

On January 19, 2010, the Court ordered the complaint dismissed with leave to amend. The order of dismissal was based upon the vagueness of the complaint which made it impossible to determine whether the underlying criminal proceedings terminated in his favor and because it appeared to the Court that Plaintiff may have been attempting to state a class action claim, although the ambiguity of the complaint made this unclear. (Doc. 5) Also, although Plaintiff alleged that the officers acted in their official capacities, he failed to state any facts that would give rise to municipal liability. (Doc. 5)

1 The order allowed Plaintiff 30 days time in which to file an amended complaint. (Doc. 5)
2 The order was served on Plaintiff on January 19, 2010. Although the time for filing the amended
3 complaint has passed, Plaintiff has not filed an amended complaint nor sought an extension of
4 time within which to do so.

5 **RECOMMENDATION**

6 Based on the foregoing, the Court recommends,

- 7 1. That the complaint (Doc. 1) be DISMISSED, with prejudice, for failure to state a
8 claim.

9 These Findings and Recommendations are submitted to the United States District Judge
10 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the
11 Local Rules of Practice for the United States District Court, Eastern District of California.

12 Within fourteen (14) days after being served with a copy, any party may file written objections
13 with the Court and serve a copy on all parties. Such a document should be captioned “Objections
14 to Magistrate Judge’s Findings and Recommendations.” Replies to the objections shall be filed
15 within seven (7) days after service of the objections. The District Judge will then review the
16 Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). Failure to file objections within
17 the specified time may waive the right to appeal the District Judge’s order. Martinez v. Ylst, 951
18 F.2d 1153 (9th Cir. 1991).

19
20 IT IS SO ORDERED.

21 Dated: February 22, 2010

22 /s/ Jennifer L. Thurston
23 UNITED STATES MAGISTRATE JUDGE
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