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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

| | | |
|-------------------------------|---|-------------------------------|
| CHRISTOPHER EVAN VANDERWERFF, |) | 1:13-cv-00521-LJO-BAM (PC) |
| |) | |
| Plaintiff, |) | FINDINGS AND RECOMMENDATIONS |
| |) | REGARDING DISMISSAL OF ACTION |
| v. |) | FOR FAILURE TO STATE A CLAIM |
| |) | |
| K. ALLISON, et al., |) | FOURTEEN-DAY DEADLINE |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |

Plaintiff Christopher Evan Vanderwerff (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on February 13, 2013.

On April 25, 2014, the Court dismissed Plaintiff’s complaint for failure to state a claim, with leave to file an amended complaint within thirty days. 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e). Plaintiff was warned that if he failed to file an amended complaint in compliance with the order, this action would be dismissed for failure to state a claim.

Plaintiff failed to file an amended complaint. As such, on June 6, 2014, the undersigned issued Findings and Recommendations that this action be dismissed based on Plaintiff’s failure to state any claims upon which relief may be granted. (ECF No. 17.) However, on the same date, Plaintiff filed a motion requesting a forty-five (45) day extension of time to file his amended complaint. (ECF No. 16.) Based on Plaintiff’s motion, on June 10, 2014, the Court vacated the findings and recommendations and granted Plaintiff a forty-five day extension of

1 time to file his amended complaint. Plaintiff's amended complaint was due on or before July 24,
2 2014. (ECF No. 18.)

3 On July 25, 2014, Plaintiff filed a second motion requesting an additional forty-five days
4 to file his amended complaint. (ECF No. 19.) On July 29, 2014, the Court granted Plaintiff's
5 motion for an extension of time. Plaintiff's amended complaint was due on or before September
6 7, 2014. (ECF No. 20.)

7 On September 5, 2014, Plaintiff filed a motion for appointment of counsel. (ECF No.
8 21.) The Court denied the motion on September 8, 2014. (ECF No. 22.)

9 The deadline for Plaintiff to file his amended complaint has passed and Plaintiff has not
10 complied with or otherwise responded to the Court's order. As a result, there is no pleading on
11 file which sets forth any claims upon which relief may be granted.

12 Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), IT IS HEREBY
13 RECOMMENDED that this action be dismissed based on Plaintiff's failure to state any claims
14 upon which relief may be granted.

15 These findings and recommendations will be submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
17 fourteen (14) days after being served with these findings and recommendations, Plaintiff may file
18 written objections with the Court. The document should be captioned "Objections to Magistrate
19 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
20 within the specified time may waive the right to appeal the District Court's order. Martinez v.
21 Ylst, 951 F.2d 1153 (9th Cir. 1991).

22 IT IS SO ORDERED.

23 Dated: September 23, 2014

24 /s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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