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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PATRICIA A. MCCOLM,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

CASE No. 1: 14-cv-00580-LJO-MJS (PC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO:**

**1) DISMISS WITH PREJUDICE ALL
CLAIMS EXCEPT PLAINTIFF'S ADA
CLAIMS, FIRST AMENDMENT
CLAIMS FOR RETALIATION, AND
ACCESS TO COURTS, AND EIGHTH
AMENDMENT CLAIMS FOR
EXCESSIVE FORCE AND FAILURE-
TO-PROTECT ; AND**

**2) DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR
FAILURE TO STATE A CLAIM**

(ECF No. 47)

**THIRTY DAY DEADLINE TO FILE AN
AMENDED COMPLAINT**

Plaintiff is a former state prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 of the United States District Court for the Eastern District of California.

1 On August 14, 2017, the Magistrate Judge screened Plaintiff's first amended
2 complaint and found that it did not state any cognizable claims. (ECF No. 47.) Findings
3 and recommendations were issued recommending that Plaintiff be given leave to amend
4 on her claims relating to the Americans with Disability Act, First Amendment access to
5 courts,¹ First Amendment retaliation, Eighth Amendment excessive force, and Eighth
6 Amendment failure-to-protect; but that all other claims be dismissed with prejudice. (Id.)
7 Plaintiff filed objections. (ECF No. 52.)

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has
9 conducted a de novo review of this case. Having carefully reviewed the entire file, the
10 Court finds the findings and recommendations to be supported by the record and by
11 proper analysis. Plaintiff's objections do not raise an issue of fact or law under the
12 findings and recommendations. The standards that her claims must meet are clearly laid
13 out in this Court's screening orders and her amended complaint does not meet these
14 standards. Plaintiff was given multiple opportunities to file an amended complaint that
15 states a claim and she has not done so. With regard to the claims that are to be
16 dismissed with prejudice, the defects do not appear to be capable of cure through
17 amendment.

18 Accordingly, it is HEREBY ORDERED that:

- 19 1. The Court adopts the August 14, 2017, findings and recommendations
20 (ECF No. 47) in full;
- 21 2. Plaintiff's first amended complaint is dismissed for failure to state a claim;
- 22 3. All claims except Plaintiff's ADA, First Amendment retaliation and access to
23 courts, and Eighth Amendment excessive force and failure-to-protect claims, are
24 dismissed with prejudice;
- 25 4. Within thirty days of the date of this order, Plaintiff shall file a second
26 amended complaint curing the deficiencies identified in the screening order

27 _____
28 ¹ This was erroneously described in the screening order as a Fourteenth Amendment claim. However, the
Magistrate Judge correctly applied a First Amendment analysis to this claim.

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regarding her claims for violation of the ADA, First Amendment retaliation and access to courts, and Eighth Amendment excessive force and failure-to-protect;

5. Failure to file an amended complaint within the time stated may result in dismissal of the action without further notice to Plaintiff.

IT IS SO ORDERED.

Dated: February 22, 2018

/s/ Lawrence J. O’Neill
UNITED STATES CHIEF DISTRICT JUDGE