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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHARLIE RODRIGUEZ,

Plaintiff,

v.

PALMERO, M.D., et al.,

Defendants.

Case No. 1:14-cv-01742 DLB PC

ORDER VACATING ORDER DISMISSING
COMPLAINT WITH PREJUDICE FOR
FAILURE TO STATE A CLAIM

ORDER DIRECTING CLERK OF COURT TO
REOPEN ACTION AND RE-SERVE
PLAINTIFF WITH ORDER DISMISSING
COMPLAINT [ECF NO. 8]

ORDER GRANTING PLAINTIFF LEAVE TO
FILE AMENDED COMPLAINT

[THIRTY-DAY DEADLINE]

Plaintiff Charlie Rodriguez (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on November 7, 2014.¹ He names Palmero, M.D., as Defendant.

On September 8, 2015, the Court screened the complaint and determined that Plaintiff failed to state a claim upon which relief may be granted under Section 1983. Plaintiff was provided an opportunity to file an amended complaint and he was directed to file the amended complaint within thirty (30) days. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012). Over thirty days passed

¹ Plaintiff consented to the jurisdiction of the Magistrate Judge on December 8, 2014.

1 and Plaintiff failed to file an amended complaint or otherwise communicate with the Court. Plaintiff
2 was forewarned: “If Plaintiff fails to file an amended complaint in compliance with this order, this
3 action will be dismissed, with prejudice, for failure to state a claim.” Accordingly, on October 28,
4 2015, the Court issued an order dismissing the complaint for failure to state a claim and terminated
5 the case.

6 On November 6, 2015, Plaintiff filed the instant motion to re-open the case. Plaintiff states
7 he never received the Court’s order dismissing the complaint of September 8, 2015. He states he
8 recently had arthroscopic surgery on his right shoulder and is still in recovery. Good cause having
9 been presented, the Court will grant Plaintiff’s motion to re-open the case and provide Plaintiff a
10 further opportunity to amend the complaint to state a claim.

11 Accordingly, it is HEREBY ORDERED that:

- 12 1. The order of October 28, 2015, dismissing the complaint is VACATED;
- 13 2. The Clerk of Court is DIRECTED to re-open the case and re-serve Plaintiff with the
14 Court’s order of September 8, 2015 [ECF No. 8];
- 15 3. Plaintiff is GRANTED thirty (30) days from the date of service of this order to file an
16 amended complaint. Plaintiff is advised that failure to comply will result in dismissal
17 of the complaint for failure to state a claim.

18
19 IT IS SO ORDERED.

20 Dated: November 20, 2015

/s/ Dennis L. Beck
21 UNITED STATES MAGISTRATE JUDGE