

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
9

10 CHARLES DAVILA,

11 Plaintiff,

12 vs.

13 D. SMITH,

14 Defendant.  
15  
16

1:15-cv-00094-LJO-EPG-PC

ORDER FOLLOWING APPEAL

ORDER DISMISSING FEDERAL CLAIMS  
WITH PREJUDICE FOR FAILURE TO  
STATE A CLAIM AND DISMISSING  
STATE LAW CLAIMS WITHOUT  
PREJUDICE

17 Plaintiff Charles Davila (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*  
18 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint  
19 commencing this action on January 20, 2015. (ECF No. 1.) Plaintiff filed an Amended  
20 Complaint on June 25, 2015. (ECF No. 10.)

21 On July 26, 2016, the assigned Magistrate Judge issued Findings and Recommendations  
22 pursuant to 28 U.S.C. § 636(b) that Plaintiff’s federal claims dismissed with prejudice, and  
23 Plaintiff’s state claims dismissed without prejudice. (ECF No. 12). Plaintiff objected to the  
24 Findings and Recommendation on August 11, 2016. (EF No. 13.)

25 The Findings and Recommendations were adopted in full by the undersigned judge on  
26 August 19, 2016. (ECF No. 14.) The Order adopting the Findings and Recommendations  
27 stated that “[t]his action is dismissed, with prejudice, based on Plaintiff’s failure to state a claim  
28

1 upon which relief may be granted under § 1983” (*Id.*) Plaintiff filed a notice of appeal on  
2 August 26, 2016. (ECF No. 16.)

3 On March 21, 2017, the U.S. Court of Appeals for the Ninth Circuit issued a  
4 Memorandum affirming in part, vacating in part, and remanding the case. (ECF No. 21.) The  
5 Ninth Circuit held that this Court properly dismissed Plaintiff’s federal claims and did not  
6 abuse its discretion in refusing to exercise supplemental jurisdiction of Plaintiff’s state law  
7 claims. (*Id.* at 2-3) However, the Ninth Circuit vacated the judgment “to the extent it dismisses  
8 Davila’s state law claims with prejudice” and remanded the case “for the sole purpose of  
9 dismissing the state law claims without prejudice.” (*Id.* at 3.)

10 Accordingly, the Court hereby ORDERS as follows:

11 Pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), this action is dismissed for  
12 failure to state a claim upon which relief may be granted under § 1983, with Plaintiff’s federal  
13 claims dismissed with prejudice, and Plaintiff’s state claims dismissed without prejudice.

14 IT IS SO ORDERED.

15 Dated: May 15, 2017

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