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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

STEVE RIVERS,)	Case No.: 1:15-cv-00276-LJO-BAM (PC)
)	
Plaintiff,)	FINDINGS AND RECOMMENDATIONS THAT
)	DEFENDANTS KING AND LAM BE DISMISSED
v.)	FOR FAILURE TO STATE A CLAIM UPON
AUDREY KING, et al.,)	WHICH RELIEF COULD BE GRANTED
)	
Defendants.)	FOURTEEN-DAY DEADLINE
)	
)	

Plaintiff Steve Rivers is a civil detainee proceeding pro se and in forma pauperis in this civil rights action. On January 4, 2016, the Court screened Plaintiff's first complaint and found that Plaintiff stated a cognizable Fourteenth Amendment claim in connection with his February 2013 infection against Defendants Nguyen, Sandhu, and Lopez, but failed to state a claim against Defendants King, Lam, and unnamed Doe defendants. Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007); Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010). In its January 4, 2016 order, the Court informed Plaintiff of the deficiencies in his complaint regarding Defendants King, Lam and the unnamed Doe defendants, and granted Plaintiff the opportunity to file a second amended complaint that corrects the identified deficiencies, or to notify the Court that he is willing to proceed only on his cognizable claims.

On January 21, 2016, Plaintiff filed a notice stating that he is willing to proceed only on the claims found by the Court to be cognizable. He further stated that he filed a second amended

1 complaint with the claims and allegations that he has elected not to pursue stricken-out or removed, so
2 as not to confuse Defendants Nguyen, Sandhu and Lopez when they are served with process. Plaintiff
3 specifically explained that his second amended complaint, also filed on January 21, 2016, is not an
4 attempt to cure any deficiencies found in his prior amended complaint.

5 Because Plaintiff has filed a notice indicating his desire to proceed only against Defendants
6 Nguyen, Sandhu and Lopez, the Court recommends dismissal of Defendants King and Lam for
7 Plaintiff's failure to state a claim upon which the Court could grant relief. See Lopez v. Smith, 203
8 F.3d 1122, 1127 (9th Cir. 2007)(pro se litigant must be given leave to amend his or her complaint
9 unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment).
10 See also Ferdik v. Bonzelet, 963 F.2d 1258, 1261 (9th Cir. 1992)(dismissal with prejudice upheld
11 where court had instructed plaintiff regarding deficiencies in prior order dismissing claim with leave to
12 amend).

13 Accordingly, IT IS HEREBY RECOMMENDED that Defendants Audrey King and Phil Lam,
14 M.D., be dismissed for failure to state a claim upon which relief can be granted.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 18 U.S.C. § 636(b)(1)(B). Within **fourteen (14)**
17 **days** after being served with these findings and recommendations, Plaintiff may file written objections
18 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings and
19 Recommendations." Plaintiff is advised that failure to file objections within the specified time may
20 result in waiver of rights on appeal. Wilkerson v. Wheeler, 77 F.3d 834 (9th Cir. 2014)(citing Baxter
21 v. Sullivan, 923 F.2d 1394 (9th Cir. 1991)).

22
23 IT IS SO ORDERED.

24 Dated: January 28, 2016

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