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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

AUBREY LEE BROTHERS, II,
Plaintiff,
v.
CHITA BUENAFE, et al.,
Defendants.

Case No. 1:17-cv-00607-LJO-MJS (PC)

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS**

(ECF NO. 16)

**ORDER DENYING MOTION FOR
EXTENSION OF TIME**

(ECF NO. 21)

**ORDER REQUIRING PLAINTIFF TO AMEND
OR OTHERWISE RESPOND**

THIRTY DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. On February 28, 2018, the Court screened Plaintiff's second amended complaint and concluded it stated no cognizable claims. (ECF No. 16.) Accordingly, the undersigned issued findings and recommendations to dismiss the complaint with prejudice. (Id.)

On March 21, 2018, Plaintiff filed objections to the findings and recommendations. (ECF No. 20.) On April 2, 2018, he filed a motion for extension of time to file objections to the findings and recommendations. (ECF No. 21.)

Plaintiff's objections suggest that he may be able to state a cognizable claim based on the failure of some defendants to provide him treatment for a fracture that

1 caused pain for a period of at least six months. In light of these objections, the Court will
2 vacate its prior findings and recommendations and will afford Plaintiff a further
3 opportunity to amend to incorporate these facts in a third amended complaint. As
4 always, Plaintiff may forego amendment and notify the Court that he wishes to stand on
5 his complaint. See Edwards v. Marin Park, Inc., 356 F.3d 1058, 1064-65 (9th Cir. 2004)
6 (plaintiff may elect to forego amendment). However, if he does so, the Court will re-
7 screen the second amended complaint based solely on the allegations contained
8 therein. Allegations contained only in the objections will not be considered. Local Rule
9 220 (complaint must be complete in itself without reference to prior pleadings).

10 Given this ruling, Plaintiff's motion for extension of time will be denied as moot,
11 both on the ground that Plaintiff already has filed objections and because the findings
12 and recommendations are being vacated.

13 Accordingly, it is HEREBY ORDERED that:

- 14 1. The Clerk's Office shall send Plaintiff a blank civil rights complaint form;
- 15 2. Within thirty (30) days from the date of service of this order, Plaintiff must:
 - 16 a. File an amended complaint curing the deficiencies identified by the
17 Court in this order, or
 - 18 b. Notify the Court in writing that he wishes to stand on his complaint
19 as written;
- 20 3. Plaintiff's motion for extension of time is denied as moot; and
- 21 4. If Plaintiff fails to comply with this order, the undersigned will recommend
22 the action be dismissed for failure to obey a court order and failure to
23 prosecute.

24
25 IT IS SO ORDERED.

26 Dated: April 11, 2018

27 /s/ Michael J. Seng
28 UNITED STATES MAGISTRATE JUDGE