

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT MITCHELL,

Plaintiff,

V.

CDCR SECRETARY JEFFERY BEARD, et al.,

Defendants.

Case No. 1:17 -cv-01032-DAD-SAB

ORDER VACATING FINDINGS AND
RECOMMENDATIONS ISSUED
NOVEMBER 13, 2017

| (ECF No. 17)

Plaintiff Robert Mitchell (“Plaintiff”), a former state prisoner, proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 12, 2017 in the Central District of California. On August 3, 3017, the matter was transferred to the Eastern District of California.

On August 23, 2017, the Court dismissed Plaintiff's complaint for failure to state a claim under section 1983 and ordered Plaintiff to file an amended complaint within thirty days. 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e). On September 25, 2017, Plaintiff filed objections to the order, and on October 2, 2017, the Court overruled Plaintiff's objections and granted Plaintiff an additional thirty days to file an amended complaint. (ECF Nos. 13, 14.) After more than thirty days passed and Plaintiff failed to file an amended complaint, the Court issued Findings and Recommendations recommending dismissal of the action for failure to comply with a court order and failure to state a cognizable claim on November 13, 2017.

1 On November 20, 2017, the Court received a letter from Plaintiff, along with a first
2 amended complaint. (ECF Nos. 18, 19.) Plaintiff submits that he attempted to file his first
3 amended complaint but it was returned to him with a notation that the case number was
4 incorrect. (ECF No. 18.) Plaintiff submits a clerk's notice which supports his contention. (Id.)
5 Based on Plaintiff's contention and the fact that he has filed his first amended complaint, the
6 Court will vacate the Findings and Recommendations issued November 13, 2017.

7 Accordingly, it is HEREBY ORDERED that:

8 1. The Findings and Recommendations issued November 13, 2017, are vacated; and
9 2. Plaintiff is advised that the Court will screen the first amended complaint in due
10 course.

11 IT IS SO ORDERED.

12 Dated: November 27, 2017



UNITED STATES MAGISTRATE JUDGE

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