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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 (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
ACTION FOR FAILURE STATE A
COGNIZABLE CLAIM AND FAILURE TO
COMPLY WITH A COURT ORDER

(ECF Nos. 11, 19)

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, 2017, 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.) Based on Plaintiff's contention that he attempted to file
3 a first amended complaint but it was returned by the Office of the Clerk, the Court vacated the
4 Findings and Recommendations issued November 13, 2017, and directed the first amended
5 complaint be filed.

6 On December 5, 2017, Plaintiff's first amended complaint was stricken because it
7 violated the Court's August 23, 2017 order which directed that the amended complaint could not
8 exceed 25 pages. (ECF No. 21.)

9 On December 8, 2017, Plaintiff filed objections "to [t]he Court's Order Dismissing
10 Plaintiff's Complaint with Leave to Amend For Failure to State a Claim." (ECF No. 22.) On
11 December 12, 2017, the Court issued an order overruling Plaintiff's objections and directed that
12 any amended complaint be filed on or before January 4, 2018. (ECF No. 23.) Plaintiff has failed
13 to file an amended complaint or otherwise responded to the Court's order, despite the
14 admonishment that he should "focus his attention on filing his amended complaint, otherwise,
15 his case will be recommended to be dismissed for the reasons previously stated." (Id.) Thus, as
16 a result of Plaintiff's failure to file an amended complaint, there is no pleading on file which sets
17 forth any claims upon which relief may be granted.

18 Accordingly, pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), it is HEREBY
19 RECOMMENDED THAT the instant action be dismissed, with prejudice, based on Plaintiff's
20 failure to comply with a court order and failure to state a claim upon which relief may be
21 granted.

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This Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-one (21) days** after being served with this Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: January 11, 2018


UNITED STATES MAGISTRATE JUDGE