IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY ALLARA,	) ) 2:08-CV-01474-RLH (VPC)
Plaintiff,	
vs.	) REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE
UNKNOWN,	
Defendants.	November 10, 2009

This Report and Recommendation is made to the Honorable Roger L. Hunt, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR 72-302.

Anthony Allara ("plaintiff") is a state prisoner proceeding *pro se*. On June 22, 2009, a report and recommendation was filed recommending that the District Court dismiss plaintiff's amended complaint without prejudice and with leave to amend (#31). On July 15, 2009, the District Court adopted the report and recommendation and ordered that in accordance with the report and recommendation (#31), plaintiff was required to identify at least one defendant by name. Plaintiff's original complaint failed to list the name of any defendant; rather, as parties, it listed: "2 names of [correctional officers] in my unissued legal property" (#11). Plaintiff was granted thirty days from the date of service of the order, or until August 14, 2009 to file an amended complaint that complied with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice (#35). Plaintiff was cautioned that his failure to file a second amended complaint would result in a dismissal of this action. *Id*.

Plaintiff sought an extension of time to file his second amended complaint (#36). In his request for additional time, plaintiff stated that he had not yet received a reply to a letter he wrote requesting the names of the two guards mentioned in his complaint. *Id.* In addition, plaintiff claimed that he had been denied access to the law library. *Id.* Plaintiff was granted an extension

2
 3

of time to August 31, 2009 to file his second amended complaint (#37). Plaintiff was advised that the court would not entertain any additional motions for extension of time. *Id*.

Since that order granting an extension of time was issued, plaintiff has sent three letters to the court claiming that no one has responded to his correspondence, and that he has no access to the law library (#s 38, 39, & 40). Plaintiff filed an original complaint (#1) and a first amended complaint (#11) in this action. In addition, he has filed several other motions with this court. Plaintiff clearly has access to the courts and access to forms to initiate a case in federal court. The right of access to the courts is only a right to bring complaints to the federal court and not a right to discover such claims or to litigate them effectively once filed with the court. *Lewis v. Casey*, 518 U.S. 343, 354-55 (1996); *Cornett v. Donovan*, 51 F.3d 894, 898 (9th Cir. 1995).

Plaintiff has been on notice since late June 2009 that he must file an amended complaint which identifies at least one defendant by name (#31). To date he has failed to do so. Physical access to the law library or research provided by the law library or prison law clerks will in no way assist plaintiff in curing his fatal flaw in this case, that is identifying at least one defendant by name.

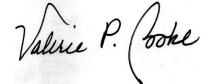
Therefore, it is recommended that the District Court enter an order dismissing this case without prejudice.

The parties are advised:

- 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule 72-304(b) of the Local Rules of Practice, the parties may file specific written objections to this report and recommendation within ten days of receipt. These objections should be entitled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the District Court.
- 2. This report and recommendation is not an appealable order and any notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

Accordingly, IT IS HEREBY RECOMMENDED that the District Judge enter an order **DISMISSING** this case without prejudice.

**DATED:** November 10, 2009.



UNITED STATES MAGISTRATE JUDGE