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

10 TYSON JOIEL SUGGS,

11 Plaintiff,

No. CIV S-10-0799 FCD GGH P

12 vs.

13 JOHN MARSHALL, et al.,

14 Defendants.

FINDINGS & RECOMMENDATIONS

15 _____/
16 Plaintiff is a state prisoner proceeding pro se and in forma pauperis. He seeks
17 relief pursuant to 42 U.S.C. § 1983.

18 On May 12, 2010, the court issued a screening order where plaintiff's complaint
19 was dismissed with leave to file an amended complaint within twenty-eight days. The court
20 outlined the deficiencies in plaintiff's complaint and set forth what would be required in an
21 amended complaint. On July 13, 2010, plaintiff filed a response to the court's screening order.
22 On August 3, 2010, the court construed plaintiff's response as an amended complaint and
23 dismissed it with leave to amend. The court noted that plaintiff's response merely added
24 additional facts but did include the information from the original complaint. The court informed
25 plaintiff that pursuant to Local Rule 220, the court cannot refer to a prior pleading in order to
26 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended

1 complaint be complete in itself without reference to any prior pleading. Plaintiff was granted
2 twenty-eight days to file a proper amended complaint.

3 The twenty-eight days have passed and plaintiff has not filed a proper amended
4 complaint. To the extent, that plaintiff's August 10, 2010, letter could be construed as an
5 amended complaint, this action must still be dismissed as plaintiff has failed to cure the
6 deficiencies of his original complaint. Plaintiff alleges that two other inmates attacked him.

7 In order to state a claim under § 1983, a plaintiff must allege that: (1) defendant
8 was acting under color of state law at the time the complained of act was committed; and (2)
9 defendant's conduct deprived plaintiff of rights, privileges or immunities secured by the
10 Constitution or laws of the United States. 42 U.S.C. § 1983; see West v. Atkins, 487 U.S. 42, 48
11 (1988).

12 The inmates are not proper defendants as there is no evidence that they were
13 acting under color of state law. Plaintiff has identified a correctional officer but has repeatedly
14 failed to set forth any viable allegations against him. For all the above reasons, plaintiff's
15 complaint should be dismissed and this case closed.

16 IT IS HEREBY RECOMMENDED that plaintiff's action be dismissed and this
17 case closed.

18 These findings and recommendations are submitted to the United States District
19 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
20 days after being served with these findings and recommendations, any party may file written
21 objections with the court and serve a copy on all parties. Such a document should be captioned
22 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
23 shall be served and filed within fourteen days after service of the objections. The parties are

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1 advised that failure to file objections within the specified time may waive the right to appeal the
2 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: September 30, 2010

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

GGH: AB
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