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

ANDRE McDANIEL,

Plaintiff,

No. 2:11-cv-3041 JAM KJN P

vs.

FAIRFIELD POLICE DEPT., et al.,

Defendants.

ORDER

_____ /


Plaintiff is a former state prisoner. By order filed December 2, 2011, plaintiff's complaint was dismissed, and plaintiff was granted thirty days in which to file an amended complaint. On February 2, 2012, the undersigned issued findings and recommendations based on plaintiff's failure to file an amended complaint. On February 8, 2012, plaintiff filed objections to the findings and recommendations. Plaintiff claims his response was delayed based on his effort to obtain counsel. Plaintiff states he can now provide the names of the parties involved.

However, while plaintiff is correct that he needs to name individuals as defendants, the court's December 2, 2011 order provided standards that plaintiff must meet in order to state a cognizable civil rights claim against defendants. For example, the CVS Pharmacy and the individual pharmacists are not state actors acting under color of state law. (Dkt. No. 4 at 4.) Thus, plaintiff cannot state a cognizable civil rights claim against the

1 pharmacist. In any event, plaintiff failed to file an amended complaint naming the individuals
2 referenced in his objections. Accordingly, the court will not vacate the February 2, 2012 findings
3 and recommendations. Rather, plaintiff will be provided one final opportunity to file an
4 amended complaint that complies with this court's December 2, 2011 order. Should plaintiff fail
5 to file a timely amended complaint, the February 2, 2012 findings and recommendations will be
6 forwarded to the district court for review and adoption.

7 Accordingly, IT IS HEREBY ORDERED that plaintiff is granted twenty-one days
8 from the date of this order in which to file an amended complaint that complies with the court's
9 December 2, 2011 order. Failure to comply with this order may result in dismissal of this action.

10 DATED: February 13, 2012

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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