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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH WHITAKER,  
Plaintiff,  
v.  
CRANE, et al.,  
Defendants.

No. 2:13-cv-00505 KJM DAD P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On August 4, 2014, the court denied plaintiff’s application for a temporary restraining order and dismissed plaintiff’s Second Amended Complaint pursuant to 28 U.S.C. § 1915A for failure to state a claim upon which relief may be granted. (See ECF No. 23.) The court granted plaintiff leave to file a Third Amended Complaint, and also directed plaintiff to file, within 30 days, a new application to proceed in forma pauperis that included a certified copy of his prison trust account statement for the preceding six-month period. (Id.) Plaintiff was also informed that “the court will not review any Third Amended Complaint he may elect to file unless he also submits a new and properly completed in forma pauperis application.” (Id. at 3.) Finally, plaintiff was warned that “failure to comply with this order will result in a recommendation that this action be dismissed without prejudice.” (Id. at 8.)

1 Plaintiff filed neither a new application to proceed in forma pauperis nor a Third  
2 Amended Complaint. Accordingly, on December 3, 2014, the court filed Findings and  
3 Recommendations recommending dismissal of the action without prejudice. (ECF No. 25.)

4 On December 17, 2014, plaintiff filed a Third Amended Complaint. (ECF No. 26.)  
5 However, he failed to file an application to proceed in forma pauperis. Out of an abundance of  
6 caution, the court has nevertheless reviewed plaintiff's Third Amended Complaint. Plaintiff  
7 therein alleges as follows. On August 23, 2012, Correctional Officer L. Crane threatened to kill  
8 him. Plaintiff filed an administrative grievance with then-Sergeant, now-Lieutenant Jones. Jones  
9 told plaintiff, "Shut up, I'm tired of you," and then ordered plaintiff to submit to being handcuffed  
10 or else be pepper-sprayed. Plaintiff responded, "I'll 1983 you," to Jones. Plaintiff was then  
11 placed in a Mental Health Crisis Bed ("MHCB"). Plaintiff alleges that he was denied proper  
12 administrative procedures in connection with his placement in a MHCB. Plaintiff seeks  
13 \$700,000,000 in damages. (Id. at 4.)

14 The court finds that, like plaintiff's previously-filed complaints, the Third Amended  
15 Complaint fails to articulate an actionable claim for relief against any named defendant despite  
16 the fact that the court has previously instructed plaintiff regarding the standards for stating a  
17 cognizable First Amendment retaliation claim. See Huskey v. City of San Jose, 204 F.3d 893,  
18 899 (9th Cir. 2000) (not every allegedly adverse action will support such a claim and cognizable  
19 retaliation claim cannot rest on "the logical fallacy of post hoc, ergo propter hoc, literally, 'after  
20 this, therefore because of this'"). Moreover, although plaintiff states that he is in a prison hospital  
21 and suffers from MRSA, he has not explained how these circumstances have prevented him from  
22 filing an in forma pauperis application as directed in the four months that have passed since the  
23 court's filing of the previous findings and recommendations.

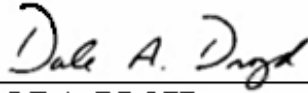
24 In light of the foregoing, IT IS HEREBY ORDERED that the findings and  
25 recommendations filed on August 4, 2014 (ECF No. 25) be vacated.

26 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.

27 These findings and recommendations are submitted to the United States District Judge  
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, plaintiff may file written objections  
2 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
3 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
4 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
5 (9th Cir. 1991).

6 Dated: January 16, 2015

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9 DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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