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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY EMERSON,
Plaintiff,
v.
NEW FOLSOM STATE PRISON,
Defendant.

No. 2:14-cv-1569 TLN KJN P

FINDINGS & RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel. He seeks relief pursuant to 42 U.S.C. § 1983.

On July 2, 2014, plaintiff filed his initial complaint. (ECF No. 1.) On August 14, 2014, the court filed an order dismissing the complaint (i) because the Eleventh Amendment barred suit against the sole defendant, New Folsom State Prison, and (ii) because among the remedies plaintiff sought was release from prison, a form of relief unavailable in a civil rights action brought under Section 1983. (ECF No. 17.) The court nonetheless granted plaintiff leave to file an amended complaint within thirty days. (Id.)

Plaintiff failed to file an amended complaint. As a result, on October 17, 2014, the court issued findings and recommendations recommending that the action be dismissed without prejudice. (ECF No. 22.) Plaintiff was given fourteen days to file objections thereto. (Id.) On October 30, 2014, plaintiff filed objections consisting of a single handwritten page, reading as

1 follows:

2 MAGISTRATE JUDGE KENDALL J. NEWMAN.
3 ALL IS WELL.
4 OBVIOUSLY YOU DIDN'T READ MY 1983 OR YOU WOULDN'T OF SENT
THIS I REALIZE YOU MADE A MISTAKE CORRECT IT.

5 (ECF No. 24 at 1.) Enclosed with this statement was a copy of the October 17, 2014 findings and
6 recommendations. (Id. at 4-5.) Out of an abundance of caution, on November 17, 2014, the court
7 issued an order granting plaintiff thirty additional days to file an amended complaint. (ECF
8 No. 26.)

9 On December 3, 2014, plaintiff filed a notice explaining that he would be unable to file an
10 amended complaint within thirty days; attached to this notice was a memorandum, dated
11 December 1, 2014, on the letterhead of California Correctional Health Care Services. (ECF
12 No. 27 at 2.) The memorandum was written by one M. DiCiro, whose title is listed as “Senior
13 Psychologist Supervisor, Crisis Treatment Center, California State Prison, Sacramento.” (Id.)
14 The memorandum provides that plaintiff was involuntarily admitted to the Correctional
15 Treatment Center on November 4, 2014, that plaintiff was being compulsorily medicated, and
16 that he “had not been provided regular access to writing implements and incoming mail due to the
17 inherent restrictions of the environment . . . and not permitted access to the law library throughout
18 [his] stay.” (Id. at 2.)

19 In light of this memorandum, on February 18, 2015, the court issued an order providing
20 plaintiff with an additional 30 days to file an amended complaint. (ECF No. 30.) Plaintiff was
21 therein warned that “[n]o additional extension of time will be given unless plaintiff provides
22 further documentation from prison staff setting forth the reason(s) that he has been unable to
23 timely respond to this order.” (Id. at 2.)

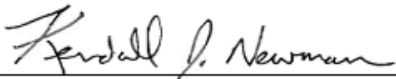
24 More than thirty days have passed since entry and service of that order, yet plaintiff has
25 not filed an amended complaint, or otherwise responded to the court’s order.

26 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
27 prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

28 These findings and recommendations are submitted to the United States District Judge

1 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
2 after being served with these findings and recommendations, plaintiff may file written objections
3 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings
4 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
5 time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153
6 (9th Cir. 1991).

7 Dated: April 13, 2015

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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