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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES ANTHONY SMITH,  
Plaintiff,  
v.  
SISKIYOU COUNTY JAIL, et al.,  
Defendants.

No. 2:15-cv-2534-TLN-EFB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

On October 13, 2017, the court dismissed plaintiff’s amended complaint for failure to state a claim, with leave to amend.<sup>1</sup> ECF No. 17. Rather than amend his complaint he filed a “Motion for Judgment,” pursuant to Rule 58(d) of the Federal Rules of Civil Procedure and stated that he would “not be amending his complaint any further.” ECF No. 18. That filing was erroneously construed as a notice of voluntary dismissal pursuant to Rule 41(a)(1)(A)(ii) and the case was closed. ECF No. 19. On appeal, the U.S. Court of Appeals for the Ninth Circuit vacated the voluntary dismissal order and remanded to this court “to permit the district judge to enter a final judgment pursuant to appellant’s November 13, 2017 motion for judgment.” ECF No. 23.

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<sup>1</sup> Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

1 In light of the above, IT IS HEREBY RECOMMENDED that this action be dismissed,  
2 with prejudice, for failure to state a claim upon which relief could be granted, and the Clerk be  
3 directed to enter judgment and close the case.

4 These findings and recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
6 after being served with these findings and recommendations, any party may file written  
7 objections with the court and serve a copy on all parties. Such a document should be captioned  
8 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
9 objections shall be served and filed within fourteen days after service of the objections. The  
10 parties are advised that failure to file objections within the specified time may waive the right to  
11 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
12 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

13 Dated: May 1, 2018.

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15 EDMUND F. BRENNAN  
16 UNITED STATES MAGISTRATE JUDGE  
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