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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGER GIFFORD,  
Plaintiff,  
v.  
ROBERT PUCKETT, SR., et.al.,  
Defendants.

No. 2:16-cv-00955-KJM-GGH

ORDER

Plaintiff is proceeding pro se with the above-entitled action.

On August 17, 2017, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within 30 days of their issuance. ECF No. 69. Plaintiff filed objections on September 15, 2017. ECF No. 70.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having reviewed the file, the court finds the findings and recommendations to be supported by the record and by the proper analysis. Plaintiff has declined to file a third amended complaint despite being given ample opportunity to do so. In his response to an order to show cause, he essentially has objected to the suggestion that he needs to file a third amended complaint in order for this case to proceed. In this same response he cites to *Edwards v. Marin Park, Inc.*, 356 F.3d 1058 (9th Cir. 2004), suggesting he plans to stand on

1 the Second Amended Complaint and reserves the right to appeal the court's determination that the  
2 case cannot proceed on that complaint. *See* ECF 65 at 6. Given plaintiff's citation to *Edwards*, in  
3 considering the alternative recommendations made by the magistrate judge in part, the court  
4 determines dismissal should be based on Federal Rule of Civil Procedure 12(b)(6), with  
5 prejudice. Additionally, the court declines to adopt as part of its own order the paragraph in the  
6 findings and recommendations at page 14, lines 3 through 15; this paragraph is not material to the  
7 core analysis conducted and recommendations made by the magistrate judge.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The findings and recommendations filed August 17, 2017 are adopted as set forth  
10 herein.
- 11 2. To the extent the Second Amended Complaint contains claims based on activity  
12 pre-dating June 15, 2015 and stated against the defendants common to plaintiff's  
13 prior case discussed in the findings and recommendations, *Gifford v. Hornbrook*  
14 *Community Services District*, Case No. 2:15-cv-1274 MCE AC (E.D. Cal.), those  
15 portions of the Second Amended Complaint are dismissed on res judicata grounds.
- 16 2. The balance of plaintiff's Second Amended Complaint is dismissed based on  
17 Federal Rule of Civil Procedure 12(b)(6), with prejudice.
- 18 3. The Clerk of the Court shall CLOSE this file.

19 **IT IS SO ORDERED.**

20 DATED: March 27, 2018.

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24 UNITED STATES DISTRICT JUDGE  
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