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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TOM SMITH,
Plaintiff,
v.
CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES, et al.,
Defendants.

No. 2:16-cv-1038-TLN-CMK-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to Eastern District of California local rules.

On February 10, 2017, the Magistrate Judge filed findings and recommendations herein which were served on the parties and which contained notice that the parties may file objections within a specified time. Timely objections to the findings and recommendations have been filed.

The Magistrate Judge recommends dismissing the case without leave to amend. However, a court should grant leave to amend “if it appears at all possible that the plaintiff can correct the defect” by alleging other facts. *Lopez v. Smith*, 203 F.3d at 1130–31 (finding a pleading could be cured by naming the correct defendants). This Court is not convinced that it is impossible for Plaintiff to cure the deficiencies in his Complaint by alleging additional facts.

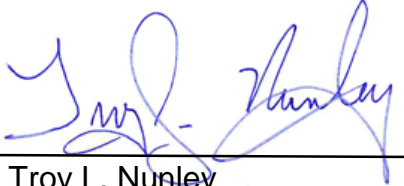
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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304(f), this
2 Court has conducted a de novo review of this case. Having carefully reviewed the entire file, the
3 Court finds the findings and recommendations to be supported by the record and by proper
4 analysis.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The findings and recommendations filed February 10, 2017, are adopted in
7 in so far as they dismiss the case;
- 8 2. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a
9 claim;
- 10 3. Plaintiff's motions for summary judgment (Docs. 6,7) and for filing of
11 evidence (Doc. 9) are disregarded and denied as moot; and
- 12 4. Plaintiff shall file on the docket a First Amended Complaint within thirty
13 (30) days of this Order.

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15 Dated: March 31, 2017

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19 Troy L. Nunley
20 United States District Judge
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