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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TYRONE JAMES,
Plaintiff,
v.
SUSAN COMIER,
Defendant.

No. 2:16-cv-1108 TLN CKD PS

FINDINGS AND RECOMMENDATIONS

By order filed June 3, 2016, plaintiff was ordered to show cause why this action should not be dismissed for lack of subject matter jurisdiction. In response, plaintiff has filed an amended complaint.

The amended complaint names as the sole defendant a fellow resident of the facility where plaintiff currently resides. Plaintiff alleges that defendant violated his civil rights. However, the complaint also specifically alleges that defendant is not a state actor. Nor does it appear that defendant meets any of the four tests articulated by the Supreme Court for determining whether a private party's conduct constitutes state action. Franklin v. Fox, 312 F.3d 423, 445 (9th Cir. 2002) (private individual's action can amount to state action under (1) public function test, (2) joint action test, (3) state compulsion test, or (4) governmental nexus test).

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1 Because it does not appear plaintiff can allege facts, within the strictures of Federal Rule
2 of Civil Procedure 11, that would support a claim that defendant is a state actor and plaintiff sets
3 forth no other proper basis for subject matter jurisdiction, the complaint should be dismissed.

4 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for lack of
5 subject matter jurisdiction.

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

13 Dated: June 28, 2016

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16 CAROLYN K. DELANEY
17 UNITED STATES MAGISTRATE JUDGE

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