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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAMUEL E. CLARKE,
Plaintiff,
v.
SAN JOAQUIN COUNTY SHERIFF’S
DEPARTMENT,
Defendant.

No. 2:16-cv-1520 CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. On February 2, 2017, the court screened plaintiff’s amended complaint as the court is required to do under 28 U.S.C. § 1915A(a). Plaintiff’s amended complaint was dismissed with leave to file a second amended complaint. Plaintiff filed his second amended complaint on May 16, 2017.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

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1 When considering whether a complaint states a claim upon which relief can be granted,
2 the court must accept the allegations in the complaint as true, Erickson v. Pardus, 551 U.S. 89,
3 93-94 (2007), and construe the complaint in the light most favorable to the plaintiff, see Scheuer
4 v. Rhodes, 416 U.S. 232, 236 (1974).

5 Plaintiff alleges two San Joaquin County Deputy Sheriffs released an attack dog upon
6 plaintiff in June of 2014, causing severe damage to plaintiff's left arm. Plaintiff does not identify
7 the deputy sheriffs so there are no viable defendants.

8 When the court dismissed plaintiff's amended complaint, the court indicated plaintiff
9 would be granted one more opportunity to state a claim upon which he may proceed. Because
10 plaintiff does not identify in his second amended complaint any defendant against whom this
11 action may proceed, and it does not appear he would be able to in a third amended complaint, the
12 court will recommend that this action be dismissed without prejudice.

13 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of the Court
14 assign a district court judge to this case.

15 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.

16 These findings and recommendations will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
18 after being served with these findings and recommendations, plaintiff may file written objections
19 with the court. The document should be captioned "Objections to Findings and
20 Recommendations." Plaintiff is advised that failure to file objections within the specified time
21 may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th
22 Cir. 1991).

23 Dated: September 19, 2017

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25 _____
26 CAROLYN K. DELANEY
27 UNITED STATES MAGISTRATE JUDGE
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