

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WALTER L. COLE,
Plaintiff,
v.
D. REAMES, et al.,
Defendants.

No. 2:16-cv-02570 CKD P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. On March 1, 2017 the court screened plaintiff’s amended complaint and found that it failed to cure the defects of the original complaint as discussed in the December 15, 2016 screening order, or to state a cognizable claim against any defendant. Because it appeared that another round of amendment would be futile, the court dismissed the action for failing to state a claim.¹

Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court randomly assign a district court judge to this case.


¹ The dismissal order was based on plaintiff’s consent to magistrate judge jurisdiction which was filed on November 30, 2016. See 28 U.S.C. § 636(c). However, the Ninth Circuit Court of Appeal reversed this court’s dismissal pursuant to Williams v. King, 875 F.3d 500, 503-04 (9th Cir. 2017) (holding that magistrate judges do not have the authority to dismiss an action unless all named defendants have also consented regardless of whether they have appeared in the action, been served with process, or been screened in pursuant to 28 U.S.C. § 1915A(a)).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY RECOMMENDED that plaintiff's first amended complaint be dismissed for failing to state a claim upon which relief can be granted.

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

Dated: May 7, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE