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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   LISA BELYEW,   No. 2:17-cv-0723 CKD P

12   Plaintiff,

13   v.   ORDER AND

14   LARRY LORMAN, et al.,   FINDINGS AND RECOMMENDATIONS

15   Defendants.

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17   Plaintiff is a California prisoner proceeding pro se. On March 6, 2018, plaintiff filed an

18   amended complaint. Defendant Lorman does not object to plaintiff's request to amend and has,

19   in fact, answered the amended complaint. In the spirit of Rule 15 of the Federal Rules of Civil

20   Procedure, which generally allows a plaintiff to amend his/her pleadings one time as a matter of

21   course in the early stages of a case, the court will dismiss plaintiff's original complaint and screen

22   the amended complaint as the court is required to do under 28 U.S.C. § 1915A.

23   The court is required to screen complaints brought by prisoners seeking relief against a

24   governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The

25   court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

26   "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek

27   monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

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1   Having conducted the required screening, the court finds that plaintiff may proceed on a

2   claim arising under the Fourth Amendment against defendant Lorman. As for the other defendant

3   identified, the Colusa Police Department, plaintiff fails to state a claim upon which relief can be

4   granted as there are no allegations in the amended complaint suggesting the violation of Civil

5   Rights alleged was the result of the adoption by the Colusa Police Department of unconstitutional

6   policies. See Monell v. Dep't of Soc. Services of City of N.Y., 436 U.S. 658, 690 (1977).

7   Since defendant Lorman has already answered the amended complaint, the court, by

8   separate order, will issue a scheduling and discovery order.

9   The court notes that on February 20, 2018, plaintiff filed a motion asking that defendant

10   Lorman be held in default. Plaintiff filed her amended complaint on March 2, 2018 and

11   defendant Lorman filed his answer to the amended complaint on March 6, 2018. While Lorman

12   did not file a timely answer to the original complaint, there is no basis for entry of default as to

13   the now operative amended complaint. Accordingly, the court will recommend that plaintiff's

14   motion for default judgment be denied.

15   In accordance with the above, IT IS HEREBY ORDERED that:

16   1. Plaintiff's motion for leave to file an amended complaint is granted;

17   2. Plaintiff's original complaint is dismissed; and

18   3. The Clerk is directed to assign a district judge to this case.

19   IT IS HEREBY RECOMMENDED that:

20   1. Plaintiff's motion for default (ECF No. 22) be denied; and

21   2. The Colusa Police Department be dismissed.

22   These findings and recommendations are submitted to the United States District Judge

23   assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen after

24   being served with these findings and recommendations, plaintiff may file written objections with

25   the court. The document should be captioned "Objections to Magistrate Judge's Findings and

26   Recommendations." Plaintiff is advised that failure to file objections within the specified time

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waives the right to appeal the District Court's order. <u>Martinez v. Ylst</u>, 951 F.2d 1153 (9th Cir. 1991).

Dated: March 27, 2018

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CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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