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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JONATHAN NELSON,
Plaintiff,
v.
SAN JOAQUIN COUNTY, et al.,
Defendants.

No. 2:17-cv-00819 TLN CKD (PS)

FINDINGS AND RECOMMENDATIONS

By order filed June 26, 2017, defendant San Joaquin County’s motion to dismiss was granted and plaintiff’s complaint was dismissed for failure to state a claim. Plaintiff was granted thirty days to file an amended complaint. The thirty day period has now expired, and plaintiff has not filed a First Amended Complaint.

Instead, plaintiff has appealed a minute order essentially ruling that, because plaintiff was already given leave to amend, there was no need to grant his motion to amend. (ECF No. 16.) In plaintiff’s notice of appeal, he includes what may be construed as an amended complaint. (Id.) However, this pleading does not cure the defects of the previous complaint as discussed in the June 26, 2017 order. Thus, dismissal of this action is warranted as to defendant San Joaquin County.

As to individual defendants Moore and Mitchell, it does not appear these parties were timely served. See ECF No. 3 (April 19, 2017 order requiring plaintiff to complete service of

1 process on named defendants within 90 days per Fed. R. Civ. P. 4(m)). Thus this action should
2 be dismissed as to all defendants.

3 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without
4 prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

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

12 Dated: August 3, 2017



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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