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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

PAUL LOUIS BLANK, et al.,

No. 2:17-CV-0919-JAM-CMK

Plaintiffs,

vs.

FINDINGS AND RECOMMENDATIONS

TEHAMA COUNTY LIBRARY,

Defendant.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is plaintiff's complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h)(3), this court

1 must dismiss an action if the court determines that it lacks subject matter jurisdiction. Because
2 plaintiff, who is not a prisoner, has been granted leave to proceed in forma pauperis, the court
3 will screen the complaint pursuant to § 1915(e)(2). Pursuant to Rule 12(h)(3), the court will also
4 consider as a threshold matter whether it has subject-matter jurisdiction.

5 In this case, plaintiff names the following as defendant: Tehama County Library.
6 Plaintiff alleges that this court has jurisdiction because the case “is Constitution Civil Right
7 Complaint and American with Disabilities Act Employment Law Violation.” For the reasons
8 discussed below, the court finds that plaintiff fails to state a claim upon which relief can be
9 granted.

10 Municipalities and other local government units are among those “persons” to
11 whom liability applies in a civil rights action. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658,
12 690 (1978). Counties and municipal government officials are also “persons” for purposes of §
13 1983. See id. at 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir.
14 1989). A local government unit, however, may not be held responsible for the acts of its
15 employees or officials under a respondeat superior theory of liability. See Bd. of County
16 Comm’rs v. Brown, 520 U.S. 397, 403 (1997). Thus, municipal liability must rest on the actions
17 of the municipality, and not of the actions of its employees or officers. See id. To assert
18 municipal liability, therefore, the plaintiff must allege that the constitutional deprivation
19 complained of resulted from a policy or custom of the municipality. See id.

20 Plaintiff names as the only defendant the Tehama County Library, which is a unit
21 of Tehama County, a local government. Plaintiff does not, however, allege any improper custom
22 or policy enacted by either Tehama County or the Tehama County Library. Plaintiff merely
23 alleges that he was denied a new library card because the library’s database listed plaintiff as
24 “restricted status.” Plaintiff does not allege that this designation resulted from any improper
25 policy or custom.

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1 Because it does not appear possible that the deficiencies identified herein can be
2 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
3 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

4 Based on the foregoing, the undersigned recommends that this action be dismissed
5 for failure to state a claim upon which relief can be granted.

6 These findings and recommendations are submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
8 after being served with these findings and recommendations, any party may file written
9 objections with the court. Responses to objections shall be filed within 14 days after service of
10 objections. Failure to file objections within the specified time may waive the right to appeal.
11 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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13 DATED: July 30, 2018

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15 **CRAIG M. KELLISON**
16 UNITED STATES MAGISTRATE JUDGE
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