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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY C. BONTEMPS,
Plaintiff,
v.
J. LEBECK,
Defendant.

No. 2:17-cv-1190 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff consented to the jurisdiction of a magistrate judge. (ECF No. 5.) On June 16, 2017, the undersigned magistrate judge found plaintiff had accrued three strikes as defined by 28 U.S.C. § 1915(g), denied plaintiff’s motion to proceed in forma pauperis, and ordered plaintiff to pay the filing fee to proceed with this case. (ECF No. 4.) On August 2, 2017, the undersigned ordered this case dismissed without prejudice for plaintiff’s failure to pay the filing fee. (ECF No. 6.) Defendant was not served and has not appeared in this case.

On November 9, 2017, the Ninth Circuit Court of Appeals held that a magistrate judge lacked jurisdiction to dismiss a prisoner's case where the plaintiff had consented to magistrate judge jurisdiction and defendants had not yet been served. Williams v. King, 875 F.3d 500 (9th Cir. 2017). Specifically, the Ninth Circuit held that “28 U.S.C. § 636(c)(1) requires the consent of all plaintiffs and defendants named in the complaint—irrespective of service of process—

1 before jurisdiction may vest in a magistrate judge to hear and decide a civil case that a district
2 court would otherwise hear.” Id. at 501.


3 Plaintiff filed an appeal of the judgment in this case. On February 28, 2018, the Ninth
4 Circuit Court of Appeals vacated the judgment herein and remanded for further proceedings
5 based on its decision in Williams. (ECF No. 11.)

6 Accordingly, the Clerk of the Court IS HEREBY ORDERED to assign a district judge to
7 this case; and

8 For the reasons set forth in this court’s June 16, 2017 and August 2, 2017 orders (ECF
9 Nos. 4, 6), IT IS HEREBY RECOMMENDED that this case be dismissed without prejudice.

10 These findings and recommendations will be submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
12 after being served with these findings and recommendations, plaintiff may file written objections
13 with the court. The document should be captioned “Objections to Magistrate Judge's Findings
14 and Recommendations.” Plaintiff is advised that failure to file objections within the specified
15 time may result in waiver of the right to appeal the district court’s order. Martinez v. Ylst, 951
16 F.2d 1153 (9th Cir. 1991).

17 Dated: March 5, 2018

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21 DEBORAH BARNES
22 UNITED STATES MAGISTRATE JUDGE

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