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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL C. SCHOOL,
Plaintiff,
v.
BICE, et al.,
Defendants.

No. 2:17-cv-02156 JAM CKD (PS)

FINDINGS AND RECOMMENDATIONS

By order filed February 20, 2018, plaintiff’s complaint was dismissed for failure to state a claim, and plaintiff was granted thirty days to file an amended complaint. Plaintiff was advised that failure to file an amended complaint would result in a recommendation that this action be dismissed. The thirty day period has now expired, and plaintiff has not filed an amended complaint.

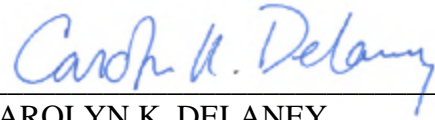
Although plaintiff’s copy of the February 20, 2018 order was returned because plaintiff refused service, it appears that plaintiff was properly served. Where a party attempts to avoid service – e.g., by refusing to take the papers – “it is sufficient if the server is in close proximity to the [party], clearly communicates intent to serve court documents, and makes reasonable efforts to leave the papers with the [party].” Doe v. Qi, 349 F. Supp. 1258, 1275, n.5 (N.D. Cal. Dec. 8, 2004), citing Errion v. Connell, 236 F.2d 447, 457 (9th Cir. 1956) (service sufficient when sheriff pitched the papers through a hole in defendant’s screen door after she spoke with him and ducked

1 behind a door to avoid service).

2 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed with
3 prejudice.

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

11 Dated: April 3, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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