

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JON HUMES,

Plaintiff,

v.

SACRAMENTO COUNTY,

Defendant.

No. 2:18-cv-0957-KJM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On June 28, 2019, the undersigned issued findings and recommendations to dismiss plaintiff’s complaint with leave to amend only as to plaintiff’s excessive force claim. ECF No. 21. The court explained that plaintiff’s allegations of excessive force were insufficient to state a claim upon which relief could be granted. *Id.* On August 20, 2019, the district judge adopted those findings and recommendations and granted plaintiff leave to amend within thirty days. ECF No. 25. The order warned plaintiff that failure to file an amended complaint could result in the dismissal of this action. *Id.* The time for acting has passed and plaintiff has not filed

/////
/////

1 an amended complaint.¹ Thus, it appears that plaintiff is unable to cure the defects in his
2 excessive force claim.

3 Accordingly, it is RECOMMENDED that this action be DISMISSED without 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.” Any response to the
9 objections shall be served and filed within fourteen days after service of the objections. The
10 parties are advised that failure to file objections within the specified time may waive the right to
11 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
12 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

13 Dated: September 30, 2019.

14 
15 EDMUND F. BRENNAN
16 UNITED STATES MAGISTRATE JUDGE
17
18
19
20
21
22
23
24
25
26

27 ¹ Plaintiff did, however, request an “outline of [the] case” to assist him in preparing an
28 amended complaint. ECF Nos. 27, 28. The Clerk of the Court responded to plaintiff’s inquiry
with a form complaint for his use and information about the court’s copy procedures.