

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

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

DARON MICHAEL OLIVER,
Plaintiff,
v.
DUANE SHELTON, et al.,
Defendants.

No. 2:18-CV-1809-KJM-DMC

FINDINGS AND RECOMMENDATIONS

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is the unopposed motion to dismiss (Doc. 22) filed by defendants Shelton and Hatley.¹ Defendants argue the complaint must be dismissed because plaintiff failed to include any request for relief as required under Federal Rule of Civil Procedure 8(a)(3).

At the outset, the court finds defendants’ reliance on Seven Worlds LLC v. Network Solutions, 260 F.3d 1089 (9th Cir. 2001) – the only Ninth Circuit case cited as directly supporting defendants’ motion – is misplaced. In Seven Worlds, the court declined to read into the plaintiff’s complaint, which had originally sought only declaratory and injunctive relief, a late-in-the-day damages claim, concluding that doing so would result in prejudice to the defendants. See id. at 1098. In that case, the defendants were clearly on notice of some claim for

¹ The remaining defendant – Mel – has filed an answer to the complaint. See Doc. 19.

1 relief, just not a claim for damages. Contrary to defendants' contentions here, the Seven Worlds
2 precedent does not stand for the proposition that failure to include a claim for relief is fatal to
3 plaintiff's complaint. Rather, the court in Seven Worlds held the attempt to add a damages claim
4 for relief late in the day would result in prejudice. Such is not the situation here, and defendants
5 do not argue they will be or have been prejudiced in any way by plaintiff's omission of a claim for
6 relief.²

7 Nonetheless, it is clear from plaintiff's complaint he has not included any request
8 for relief of any kind, as required by Rule 8(a)(3). It appears, however, this is the result of an
9 oversight, specifically the failure to include the last page of the form complaint with plaintiff's
10 filing.³ For the good of the record, the court recommends defendants' motion to dismiss be
11 granted and that plaintiff be directed to file a first amended complaint complete with his request
12 for relief.

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 _____
26 ² In this regard, the court notes that defendant Mel was able to answer the complaint
despite the lack of a specific request for relief.

27 ³ After defendants filed their motion to dismiss, plaintiff sought to amend the
complaint to include the missing page. See Doc. 28 (plaintiff's first amended complaint, stricken
28 by subsequent order because it was filed after a Rule 12(b) had been filed without consent of
defendants).

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

Based on the foregoing, the undersigned recommends that:

1. Defendants' unopposed motion to dismiss (Doc. 22) be granted; and
2. Plaintiff be directed to file a first amended complaint which contains a request for relief pursuant to Federal Rule of Civil Procedure 8(a)(3).

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

Dated: February 11, 2019



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE