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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY XAVIER SMITH,  
Plaintiff,  
v.  
LISTEN, et al.,  
Defendants.

No. 2:18-cv-3198 DB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on November 28, 2018 by filing a complaint in the Northern District. (ECF No. 1.) On December 12, 2018, the Northern District transferred the case to this court. (ECF No. 5.) After plaintiff filed his motion to proceed in forma pauperis in March 2019, this court granted plaintiff in forma pauperis status, screened the complaint, and determined plaintiff failed to state a cognizable claim for relief. (ECF No. 21.) Plaintiff was provided with legal standards for his potential claims and with instructions for filing an amended complaint. He was given thirty days to file a first amended complaint. On May 31, he filed a first amended complaint. (ECF No. 24.)

In an order filed June 7, this court found plaintiff failed to state any potentially cognizable claims in his first amended complaint. (ECF No. 25.) Plaintiff was again given instructions for filing a second amended complaint and thirty days to do so. Plaintiff then requested an extension

1 of time. In an order filed June 28, this court granted plaintiff sixty days from the date of that  
2 order to file a second amended complaint. Plaintiff was warned that if he failed to file a timely  
3 second amended complaint, this court may recommend this action be dismissed.


4 More than sixty days have passed and plaintiff has not filed a second amended complaint  
5 or otherwise responded to the court's June 28 order.

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

8 Further, IT IS RECOMMENDED that this action be dismissed for plaintiff's failure to  
9 prosecute and failure to comply with court orders. See E.D. Cal. R. 110; Fed. R. Civ. P. 41.

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: September 19, 2019

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21 DEBORAH BARNES  
22 UNITED STATES MAGISTRATE JUDGE

23 DLB:9  
24 DLB1/prisoner-civil rights/smit3198.fta fr

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