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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MOTECUZOMA P. SANCHEZ,  
  
Plaintiff,  
  
v.  
  
MICHAEL TUBBS, individually and as  
Mayor of the City of Stockton,  
  
Defendant.

No. 2:19-cv-326-JAM-EFB-PS

ORDER

On August 27, 2020, the previously assigned magistrate judge screened plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2). ECF No. 3. Plaintiff was notified that he could proceed with his viable First Amendment viewpoint discrimination claim or file an amended complaint. He was ordered, within 30 days, to return a notice of election advising the court whether he elects to proceed with his viable claim or file an amended complaint. *Id.* After plaintiff failed to timely respond to that order, the previously assigned magistrate judge recommended that the action be dismissed for failure to prosecute and to comply with court orders. ECF No. 4.

Shortly thereafter, plaintiff filed a notice of election stating that he elects to proceed only with his First Amendment viewpoint discrimination claim and not file an amended complaint. ECF No. 5. In light of plaintiff's belated notice of election, the August 29, 2020 findings and

1 recommendations will be vacated and the action will proceed on plaintiff's § 1983 First  
2 Amendment viewpoint discrimination claim against defendant Michael Tubbs.

3 According, it is hereby ORDERED that:

4 1. The August 29, 2020 findings and recommendations are vacated.

5 2. Service is appropriate for defendant Michael Tubbs.

6 3. The Clerk of Court shall send plaintiff one USM-285 form, one summons, a copy of  
7 the complaint, this court's scheduling order, and the forms providing notice of the magistrate  
8 judge's availability to exercise jurisdiction for all purposes.

9 4. Plaintiff is advised that the U.S. Marshal will require:

10 a. One completed summons;

11 b. one completed USM-285 form for defendant Michael Tubbs;

12 c. a copy of the complaint for defendant Tubbs, with an extra copy for the U.S.

13 Marshal; and

14 d. a copy of this court's scheduling order and related documents for defendant

15 Tubbs.

16 5. Plaintiff shall supply the United States Marshal, within 14 days from the date this order  
17 is filed, all information needed by the Marshal to effect service of process, and shall, within 14  
18 days thereafter, file a statement with the court that said documents have been submitted to the  
19 United States Marshal.

20 6. The U.S. Marshal shall serve process, with copies of this court's scheduling order and  
21 related documents, within 90 days of receipt of the required information from plaintiff, without  
22 prepayment of costs. The United States Marshal shall, within 14 days thereafter, file a statement  
23 with the court that said documents have been served. If the U.S. Marshal is unable, for any  
24 reason, to effect service of process on any defendant, the Marshal shall promptly report that fact,  
25 and the reasons for it, to the undersigned.

26 7. The Clerk of Court shall serve a copy of this order on the United States Marshal, 501  
27 "I" Street, Sacramento, CA 95814 (tel. 916-930-2030).

28 8. Failure to comply with this order may result in a recommendation that this action be

1 dismissed.

2 DATED: October 15, 2020

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5 UNITED STATES MAGISTRATE JUDGE

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