UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER C. CLARK,

Plaintiff,

v.

MARSHALL SAIPHER, *et al.*,

Defendants.

Case No. 2:21-cv-01326-DAD-JDP (PC)

FINDINGS AND RECOMMENDATIONS THAT THIS ACTION BE DISMISSED FOR FAILURE TO PROSECUTE AND FAILURE TO COMPLY WITH COURT ORDERS

OBJECTIONS DUE WITHIN FOURTEEN DAYS

On October 4, 2022, I screened plaintiff's first amended complaint and notified him that it alleged cognizable Eighth Amendment deliberate indifference and California Torts Claims Act ("CTCA") claims against defendants Saipher and Naseer. I notified him that its other claims were not viable. ECF No. 20. I gave plaintiff thirty days to file an amended complaint or to advise the court if he wished to stand by his current complaint and proceed only with his Eighth Amendment and CTCA claims against defendants Saipher and Naseer. *Id.* at 4. Plaintiff did not timely file either an amended complaint or a notice of election to proceed on the cognizable claims. Accordingly, on December 9, 2022, I ordered him to show cause within twenty-one days why this action should not be dismissed. ECF No. 21. I notified him that if he wished to continue with this action he must file, within twenty-one days, either an amended complaint or a notice of election stating that he wishes to proceed only with his Eighth Amendment and CTCA claims against defendants Saipher and Naseer. I also warned him that failure to comply with the

order would result in a recommendation that this action be dismissed. *Id.*

The deadline has passed, and plaintiff has not filed an amended complaint or otherwise responded to the December 9, 2022 order.

Accordingly, it is hereby RECOMMENDED that:

1. This action be dismissed for failure to prosecute and failure to comply with court orders, for the reasons set forth in the December 9, 2022 order.

2. The Clerk of Court be directed to close the case.

I submit these findings and recommendations to the district judge under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. The parties may, within 14 days of the service of the findings and recommendations, file written objections to the findings and recommendations with the court. Such objections should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge will review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).

IT IS SO ORDERED.

Dated: January 19, 2023

JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE