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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS TREHEARNE,  
Plaintiff,  
v.  
AMADOR COUNTY,  
Defendants.

No. 2:22-cv-00254 DB P

ORDER

Plaintiff, Thomas Trehearne<sup>1</sup>, is a former county inmate proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed a complaint and motion to proceed in forma pauperis on February 7, 2022. (ECF Nos. 1-2.) Plaintiff claims that defendants deprived him of outdoor exercise in violation of his Fourteenth Amendment rights.

On December 12, 2022, defendants filed a Fed. R. Civ. P. 12(b)(6) motion to dismiss plaintiff’s complaint for failure to state a claim upon which relief can be granted. (ECF No. 11.) Plaintiff failed to file an opposition or statement of non-opposition within the time provided by the Local Rules. See E.D. Cal. Local Rule 230(l). By order dated April 4, 2023, plaintiff was ordered to file an opposition, if any, within thirty days. (ECF No. 14.) On May 23, 2023,

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<sup>1</sup> Plaintiff’s name was previously spelled incorrectly. The case caption and docket now reflect the spelling provided on the plaintiff’s latest court filing. (ECF No. 17.)

1 defendants filed a Fed. R. Civ. P. 41(b) motion to dismiss for failure to prosecute and failure to  
2 comply with a court order. (ECF No. 15.)

3 Plaintiff failed to respond, and the court recommended that this action be dismissed for  
4 failure to prosecute and failure to comply with court orders. (ECF No. 16.) Thereafter, on July 5,  
5 2023, plaintiff filed objections to the findings and recommendations. (ECF No. 17.) Therein,  
6 plaintiff states that in early February 2023 plaintiff was taken to a program with none of his  
7 paperwork, where he did not have access to his phone or to an online law library. (Id. at 1.)  
8 Plaintiff was then taken back into custody for a ten-day incarceration period. (Id.) During the  
9 incarceration period plaintiff was able to access the online law library, and then learned of the  
10 defendant's motions and the findings and recommendations. (Id.) Plaintiff has stated that he  
11 wishes to proceed and has provided an updated address. (Id.)

12 In light of plaintiff's statements, the undersigned will vacate the findings and  
13 recommendations and grant plaintiff the opportunity to respond to defendant's December 12,  
14 2022, Motion to Dismiss. (ECF No. 11.) Plaintiff is advised that failure to abide by the court's  
15 order and file an opposition or statement of non-opposition will result in a recommendation that  
16 this action be dismissed.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. The court's June 14, 2023, Findings and Recommendations (ECF No. 16) are vacated.
- 19 2. Defendant's May 23, 2023, Motion to Dismiss (ECF No. 15.) is denied without  
20 prejudice.
- 21 3. Plaintiff shall have thirty days from the date of service of this order to file an  
22 opposition or statement of non-opposition to defendant's December 12, 2022, Motion  
23 to Dismiss for failure to state a claim upon which relief can be granted (ECF No. 11.)  
24 The opposition or statement of non-opposition must comply with the requirements of  
25 the Federal Rules of Civil Procedure, and the Local Rules of Practice; the response  
26 must bear the docket number assigned to this case. Plaintiff is advised that failure to

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comply with this order will result in a recommendation that this action be dismissed  
for failure to comply with court orders and failure to prosecute.

Dated: July 26, 2023



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DEBORAH BARNES  
UNITED STATES MAGISTRATE JUDGE

DB:Extern  
DB/DB Prisoner Inbox/Civil Rights/R/treh0254\_vac