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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CIXTO CRUZ MURILLO,  
Plaintiff,  
v.  
DISTRICT ATTORNEY OFFICE,  
Defendant.

Case No. 2:22-cv-01920-TLN-JDP (PC)  
ORDER WITHDRAWING FINDINGS AND  
RECOMMENDATIONS THAT THE  
ACTION BE DISMISSED FOR FAILURE  
TO COMPLY WITH COURT ORDERS  
ECF No. 27  
FINDINGS AND RECOMMENDATIONS  
THAT THE SECOND AMENDED  
COMPLAINT BE DISMISSED FOR  
FAILURE TO STATE A COGNIZABLE  
CLAIM  
ECF No. 30

Plaintiff, a state prisoner, brings this action under section 1983. I previously recommended that this action be dismissed based on plaintiff's failure to timely file an amended complaint. ECF No. 27. Weeks after those recommendations were filed, plaintiff filed an amended complaint. ECF No. 30. Given plaintiff's *pro se* status, I will excuse the untimeliness of his amended complaint and will withdraw my previous recommendations. However, I have reviewed the newly filed amended complaint, ECF No. 30, and find that it fails to state a cognizable claim. Accordingly, I now recommend dismissal of this action on that basis.



1           **II.     Analysis**

2           Plaintiff’s second amended complaint is incomprehensible. It names several defendants,  
3 including Warden Patrick Covello and an unnamed district attorney. ECF No. 30 at 1-2. His  
4 allegations are vague, relating to medical care, exercise of religion, disciplinary proceedings,  
5 retaliation, and threats to his safety. *Id.* at 3. Plaintiff does not elaborate on these categories or  
6 explain how each defendant violated his rights. Documents attached to the complaint indicate  
7 that at least some of plaintiff’s claims concern his potential release date, *id.* at 14, 16, but I cannot  
8 discern the exact nature of those claims or how any of the named defendants wronged him.

9           Given that this is plaintiff’s third complaint, and it contains all the defects of its  
10 predecessor, *see* ECF No. 21, I now recommend that this action be dismissed.

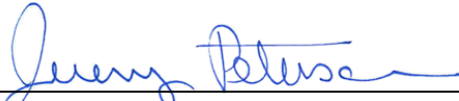
11           Accordingly, it is ORDERED that the findings and recommendations at ECF No. 27 are  
12 WITHDRAWN.

13           Further, it is RECOMMENDED that the second amended complaint, ECF No. 30, be  
14 DISMISSED without leave to amend for failure to state a viable claim under section 1983.

15           These findings and recommendations are submitted to the United States District Judge  
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
17 after being served with these findings and recommendations, any party may file written  
18 objections with the court and serve a copy on all parties. Such a document should be captioned  
19 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
20 objections shall be served and filed within fourteen days after service of the objections. The  
21 parties are advised that failure to file objections within the specified time may waive the right to  
22 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
23 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

24  
25 IT IS SO ORDERED.

26 Dated: December 12, 2023

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28 JEREMY D. PETERSON  
UNITED STATES MAGISTRATE JUDGE

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