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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS EDWARD HUMPHREY,  
  
Plaintiff,  
  
v.  
  
MODESTO POLICE DEPARTMENT,  
  
Defendant.

No. 2:24-cv-01127-DC-CSK (PS)

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS AND GRANTING  
DEFENDANT’S MOTION TO DISMISS AND  
DENYING PLAINTIFF’S MOTION TO  
AMEND

(Doc. Nos. 13, 16, 22)

Plaintiff Thomas Edward Humphrey is proceeding *pro se* and *in forma pauperis* in this civil action initiated on January 1, 2024. (Doc. No. 1.) This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 4, 2025 the assigned magistrate judge issued findings and recommendations recommending that Defendant’s motion to dismiss (Doc. No. 16) be granted because: (1) the only proper defendant in a Federal Tort Claims Act action is the United States, and Plaintiff has not named the United States as a defendant nor are there allegations to suggest there is a federal government actor; (2) Plaintiff concedes in his motion to amend his complaint that the Federal Tort Claims Act does not apply to Defendant Modesto Police Department; and (3) the complaint lacks a cognizable legal theory and does not allege any viable, specific causes of action besides reference to the Federal Tort Claims Act. (Doc. No. 22 at 5–6.) The magistrate judge also

1 recommended Plaintiff's motion for leave to amend his complaint (Doc. No. 13) be denied  
2 because: (1) Plaintiff only proposes adding a claim under the California Torts Claims Act, but  
3 that claim is barred by the timeliness requirement under the California Government Claims Act,  
4 making such amendment futile; (2) to the extent Plaintiff seeks relief from that timeliness  
5 requirement, he would need to file a petition for relief in a California state superior court, not a  
6 federal district court; and (3) Plaintiff did not file an opposition to Defendant Modesto Police  
7 Department's motion to dismiss. (*Id.* at 7–8.)

8 Those findings and recommendations were served on the parties and contained notice that  
9 any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 9.) To date,  
10 no objections to the findings and recommendations have been filed, and the time in which to do  
11 so has now passed.

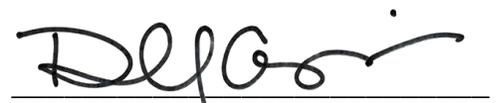
12 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a  
13 *de novo* review of the case. Having carefully reviewed the entire file, the court finds the findings  
14 and recommendations to be supported by the record and by proper analysis.

15 Accordingly,

- 16 1. The findings and recommendations issued on February 4, 2025 (Doc. No. 22) are  
17 ADOPTED in full;
- 18 2. Defendant Modesto Police Department's motion to dismiss (Doc. No. 16) is  
19 GRANTED;
- 20 3. Plaintiff's motion for leave to amend his complaint (Doc. No. 13) is DENIED;
- 21 4. This action is dismissed due to Plaintiff's failure to state a cognizable claim; and
- 22 5. The Clerk of the Court is directed to close this case.

23  
24 IT IS SO ORDERED.

25 Dated: March 11, 2025

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28 Dena Coggins  
United States District Judge