

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TYRONE HURT,

No. C -12-01995 EDL

Plaintiff,

ORDER DISMISSING CASE

v.

UNITED STATES,

Defendants.

Plaintiff Tyrone Hurt filed his complaint and Application to Proceed In Forma Pauperis on April 20, 2012. On May 3, 2012, Plaintiff consented to the jurisdiction of a Magistrate Judge pursuant to 28 U.S.C. § 636(c).¹ On May 24, 2012, the Court issued an order granting Plaintiff's Application to Proceed In Forma Pauperis, and dismissing Plaintiff's complaint. The Court gave Plaintiff leave to file an amended complaint no later than June 22, 2012.

Rather than file an amended complaint by the deadline, on June 12, 2012, Plaintiff filed an appeal to the Ninth Circuit Court of Appeals of the Court's May 24, 2012 Order. On November 15, 2012, the Ninth Circuit issued a Mandate, stating that the July 12, 2012 Judgment dismissing the appeal took effect as of November 15, 2012.

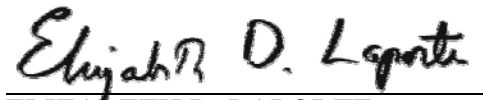
¹ To the extent that this order is dispositive, the Court does not require the consent of Defendants because Defendants have not been served and therefore are not parties under the meaning of 28 U.S.C. § 636(c). See Ornelas v. De Frantz, 2000 WL 973684, *2, n.2 (N.D. Cal. 2000) (citing Neals v. Norwood, 59 F.3d 530, 532 (5th Cir. 1995) (magistrate judge had jurisdiction to dismiss prisoner's civil rights action without consent of the defendants because the defendants had not been served yet and therefore were not parties)).

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Plaintiff failed to file a timely amended complaint, instead electing to appeal the Court's order, effectively acknowledging that he could not do so. Therefore, as stated in the Court's May 24, 2012 Order, Plaintiff's complaint is dismissed with prejudice.

IT IS SO ORDERED.

Dated: November 21, 2012



ELIZABETH D. LAPORTE
United States Magistrate Judge