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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MAURO GUMPAL,  
Plaintiff,  
v.

QUEEN OF THE VALLEY MEDICAL  
CENTER, et al.,  
Defendants.

Case No. [16-cv-06611-SI](#)

**ORDER OF DISMISSAL**

In this *pro se* prisoner’s civil action, plaintiff complained that he had become infected with several illnesses due to the use of contaminated medical instruments at a Napa hospital. The court reviewed the complaint on March 10, 2017, and dismissed it with leave to amend. That order explained that the threshold issue was whether there was a claim that would give this court original jurisdiction over this action in which state law negligence and product liability claims predominate because, if there was no federal claim (such as a claim under 42 U.S.C. § 1983), the negligence and products liability claims had to be pursued in state court. (Docket No. 7 at 3.) The court concluded that the complaint failed to state a federal claim (such as a § 1983 claim for an Eighth Amendment violation based on deliberate indifference to a serious medical need), and set a deadline of April 28, 2017, for plaintiff to file an amended complaint. (Docket No. 7.) The court explained that “[f]ailure to file the amended complaint by the deadline will result in the dismissal of the action without prejudice to plaintiff pursuing his state law claims in state court.” (*Id.* at 5.) Plaintiff did not file an amended complaint, and the deadline by which to do so has long passed. Accordingly, this action is **DISMISSED** for lack of subject matter jurisdiction because no federal claim has been stated.

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This court never reached the viability of the state law claims because it never found a claim stated that would give this court original jurisdiction. Thus, this dismissal is without prejudice to plaintiff filing an action in state court asserting his state law claims. Plaintiff is cautioned that he must act diligently to file an action in state court if he wishes to present his claims there, because statutes of limitations set time limits on the filing of an action.

**IT IS SO ORDERED.**

Dated: June 26, 2017



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SUSAN ILLSTON  
United States District Judge