

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CLARENCE BRANCH,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. [17-cv-00867-MEJ](#)**ORDER DISMISSING ACTION**

The Court earlier granted Plaintiff Clarence Branch's application to proceed in forma pauperis and screened the complaint pursuant to 28 U.S.C. § 1915. *See* March 2, 2017 Order, Dkt. No. 5. The Court explained that the complaint did not meet the pleading requirements of Federal Rule of Civil Procedure 8(a)(2), did not show that Plaintiff was entitled to relief, and did not allow the Court to draw the reasonable inference that the defendants Plaintiff had named in the action are liable for any misconduct. *Id.* at 3-4. The Court further explained the documents Plaintiff had attached to the complaint did not clarify the basis for his allegations or his theory of the case. *Id.* at 4. Because the complaint presented no cognizable legal theory, and because Plaintiff did not allege "sufficient factual matter to state a facially plausible claim[.]" the Court dismissed the complaint for failure to state a claim. *Id.* (citation omitted). The Court granted Plaintiff leave to amend by April 3, 2017. *Id.*

Instead of filing an amended complaint by April 3, 2017, Plaintiff filed a "Notice of Appeal" and a "Notice of Service" (Dkt. Nos. 6-7), and also appealed to the Ninth Circuit Court of Appeals (Dkt. No. 9). The undersigned previously noted it was not clear what the documents attached to the Notice of Appeal were, or how they related to Plaintiff's complaint. *See* April 5, 2017 Order, Dkt. No. 8. Although Plaintiff had not timely amended his complaint, the

1 undersigned found the multiple filings indicated Plaintiff intended to prosecute the action. *Id.* at 2.
2 The undersigned accordingly extended Plaintiff’s time to file an amended complaint until May 1,
3 2017. *See id.* The undersigned explained that “[i]f Plaintiff does not file an amended complaint
4 by that date, the Court will dismiss this action **without prejudice.**” *Id.* (emphasis in original).
5 On April 25, 2017, the Ninth Circuit dismissed Plaintiff’s appeal. *See* Dkt. No. 10 (“A review of
6 the record demonstrates that this court lacks jurisdiction over this appeal the order challenged in
7 the appeal is not final or appealable.”).

8 As of the date of this Order, Plaintiff has not filed an amended complaint. The Court
9 therefore dismisses this action without prejudice. The Clerk of the Court is directed to close the
10 file.

11 **IT IS SO ORDERED.**

12
13 Dated: May 5, 2017

14 
15 _____
16 MARIA-ELENA JAMES
17 United States Magistrate Judge
18
19
20
21
22
23
24
25
26
27
28