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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

P. STEPHEN LAMONT,
Plaintiff,
v.
JOHN PETRUCELLI,
Defendant.

Case No. 18-cv-02790-BLF

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF
MAGISTRATE JUDGE; AND
DISMISSING ACTION WITH
PREJUDICE**

[Re: ECF 10]


Plaintiff P. Stephen Lamont, proceeding *pro se*, filed the complaint in this action on May 10, 2018, along with an application to proceed *in forma pauperis* (“IFP”) and a motion for permission to use the Court’s Electronic Case Filing (“ECF”) system as an e-filer. Magistrate Judge Nathanael M. Cousins, to whom the case initially was assigned, denied the IFP application without prejudice, granted the motion for permission to proceed as an e-filer, and dismissed the complaint with leave to amend for lack of personal jurisdiction over Defendant John Petrucelli. Plaintiff thereafter filed the operative first amended complaint (“FAC”) and a renewed IFP application. On June 27, 2018, Judge Cousins granted Plaintiff’s renewed IFP application, directed that the case be reassigned to a district judge, and issued a Report and Recommendation (“R&R”) that the case be dismissed with prejudice for lack of personal jurisdiction over Defendant.

Plaintiff has not filed an objection to the R&R and the time to object has expired. *See* Fed. R. Civ. P. 72(b)(2) (deadline to object is 14 days after service of R&R). The Court finds Judge Cousins’ R&R to be well-reasoned and correct in every respect, and ADOPTS the R&R in its

1 entirety. In particular, the Court agrees with Judge Cousins’ conclusion that this Court lacks
2 personal jurisdiction over Defendant because it appears on the face of the FAC that Defendant is a
3 citizen of New York and that all events giving rise to this lawsuit occurred in New York. *See*
4 FAC ¶¶ 6-17, ECF 7. Judge Cousins identified that defect in his screening order dismissing the
5 complaint, and he granted Plaintiff an opportunity to amend to demonstrate the existence of
6 personal jurisdiction over Defendant. Plaintiff also had an opportunity to address the issue of
7 personal jurisdiction by filing objections to Judge Cousins’ R&R. Because Plaintiff has failed to
8 demonstrate the existence of personal jurisdiction over Defendant despite being given two
9 opportunities to do so, and because it appears that further amendment would be futile, the Court
10 agrees with Judge Cousins that it is appropriate to dismiss the case with prejudice at this time. *See*
11 *Foman v. Davis*, 371 U.S. 178, 182 (1962).

12 Accordingly, IT IS HEREBY ORDERED that the case is DISMISSED WITH
13 PREJUDICE for lack of personal jurisdiction over Defendant. The Clerk shall close the file.

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15 Dated: July 12, 2018

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17 BETH LABSON FREEMAN
18 United States District Judge

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