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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KYLE ROBERT JAMES

Plaintiff,

vs.

DEPUTY EMMENS et al

Defendants.

CASE NO. 16-cv-2823-WQH-NLS

ORDER

HAYES, Judge:

The matter before the Court is the review of the Report and Recommendation (ECF No. 43) filed by the United States Magistrate Judge.

Background

On November 14, 2016, Plaintiff commenced this action by filing the Complaint alleging five claims for relief. (ECF No. 1). On March 27, 2017, Defendants filed an Motion to Dismiss for Failure to State a Claim. (ECF No. 28). On June 1, 2017, Plaintiff filed a Response to Defendants’ Motion to Dismiss. (ECF No. 33). On June 9, 2017, Defendants filed a Reply to Plaintiff’s Response. (ECF No. 36).

On June 29, 2017, the United States Magistrate Judge issued the Report and Recommendation, recommending that this court grant the Defendants’ Motion to Dismiss. (ECF No. 43). The Magistrate Judge recommended that Plaintiff’s claims against Defendant District Attorney Bonnie Dumanis be dismissed with prejudice because they “are all factually based on her protected prosecutorial duties.” *Id.* at 6. The Magistrate Judge recommended that Plaintiff’s claims in Count Five against

1 Defendant Sgt. Castro and Defendant Lt. Jones be dismissed with prejudice because “no
2 constitutional claim can lie for their involvement in [the prison grievance] procedure.”
3 *Id.* at 7. The Magistrate Judge recommended that the state law claims that make up part
4 of Counts Two and Three and the entirety of Count Four be dismissed with prejudice
5 “[b]ased on [Plaintiff’s] failure to comply with the requisite California Government Tort
6 Claims procedure and his consent to dismiss [them].” *Id.* at 9.

7 On July 19, 2017, Plaintiff filed Objections to the Report and Recommendation
8 (ECF No. 47) asserting that his claim against Defendant Dumanis should be dismissed
9 without prejudice so that he can file an amended complaint alleging that Defendant
10 Dumanis violated his rights by failing to investigate the matters he brought to her
11 attention. (ECF No. 56 at 2). On August 7, 2017, Defendants filed a Reply to
12 Plaintiff’s Objections. (ECF No. 53). On August 30, 2017, Plaintiff filed a Response
13 to Defendants’ Reply. (ECF No. 56).

14 **Legal Standard**

15 The duties of the district court in connection with a report and recommendation
16 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28
17 U.S.C. § 636(b). The district judge must “make a de novo determination of those
18 portions of the report . . . to which objection is made,” and “may accept, reject, or
19 modify, in whole or in part, the findings or recommendations made by the magistrate.”
20 28 U.S.C. § 636(b).

21 **Ruling of the Court**

22 After conducting a *de novo* review of the Report and Recommendation and
23 considering the entire file, including Plaintiff’s objections, the Court finds that the
24 Report and Recommendation correctly determined that the motion to dismiss should be
25 granted. The Court adopts the Report and Recommendation in its entirety.

26 Plaintiff asserts that his claim against Defendant Dumanis should be dismissed
27 without prejudice so that Plaintiff can file an amended complaint. (ECF No. 56 at 2).
28 Plaintiff states that he intends to amend his complaint to allege that Defendant Dumanis

1 violated his rights by failing to investigate the matters that Plaintiff brought to her
2 attention. *Id.* The Court concludes that Plaintiff lacks standing to bring a claim against
3 District Attorney Dumanis for her alleged failure to investigate. Private citizens “lack[]
4 standing to compel the investigation or prosecution of another person.” *Graves-Bey v.*
5 *City & Cty. of San Francisco*, 669 F. App’x 373, 374 (9th Cir. 2016); *Tia v. Criminal*
6 *Investigation Demanded as Set Forth*, 441 F. App’x 457, 458 (9th Cir. 2011) (citing
7 *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). Plaintiff, as a private citizen, does
8 not have standing to bring a claim against Defendant Dumanis for failing to investigate
9 the matters alleged in his “criminal complaint.” (ECF No. 1 at 9). The Magistrate
10 Judge correctly concluded that Plaintiff’s claims against Defendant Dumanis should be
11 dismissed with prejudice.

12 **Conclusion**

13 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 43)
14 is adopted in its entirety. IT IS FURTHER HEREBY ORDERED that the Defendants’
15 Motion to Dismiss for Failure to State a Claim (ECF No. 28) is granted as follows:

16 (1) the motion to dismiss all claims against Defendant Dumanis is granted
17 with prejudice.

18 (2) the motion to dismiss the claims in Count Five against Defendant
19 Castro and Defendant Jones is granted with prejudice.

20 (3) the motion to dismiss the state law claims in Count Two and Count
21 Three, and to dismiss Count Four, is granted with prejudice.

22 DATED: September 12, 2017

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24 **WILLIAM Q. HAYES**
25 United States District Judge
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