UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES-CLIFTON BEAL, Plaintiff, v. JASON SCHULTZ, Defendant.	Case No. 2:25-cv-3348-DJC-JDP (P) ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 10, 2026, the magistrate judge filed findings and recommendations herein which were served on plaintiff, and which contained notice to plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. ECF No. 17. Plaintiff has not filed untimely objections to the findings and recommendations, which have nevertheless been considered by the undersigned.

Although Petitioner has filed an appeal of the Magistrate Judge's Findings and Recommendations (ECF No. 19), that does not deprive this Court of jurisdiction to review the Findings and Recommendations. *See e.g., Poye v. Parker*, No. 1:08-cv-00497-OWW-SMS, 2008 WL 4532515, at *1-2 (E.D. Cal. Oct. 8, 2008). "Where the

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deficiency in a notice of appeal, by reason of untimeliness, lack of essential recitals, or reference to a non-appealable order, is clear to the district court, it may disregard the purported notice of appeal and proceed with the case, knowing that it has not been deprived of jurisdiction." *Ruby v. Secretary of U.S. Navy*, 365 F.2d 385, 389 (9th Cir. 1966). A Magistrate Judge's Findings and Recommendations are not a final judgement without subsequent intervention by the district court and the notice of appeal after before the Findings and Recommendations are adopted is premature. *Serine v. Peterson*, 989 F.2d 371 (9th Cir. 1993).

The Court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge's analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed August 10, 2026, ECF No. 17, are ADOPTED in full;
2. This action is DISMISSED without prejudice for failure to prosecute for the reasons set forth in the May 4, 2026 order, *see* ECF No. 16; and
3. The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

Dated: **October 30, 2026**

Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE