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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

EDWARD DEMERSON,

Plaintiff,

v.

JEANNE S. WOODFORD, et al.,

Defendants.

CASE NO. 1:08-cv-00144-LJO-SMS PC

ORDER STRIKING STATUS REPORT FILED  
BY PLAINTIFF

(Doc. 58.)

Plaintiff Edward Demerson, is a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 29, 2008.

The Court dismissed Plaintiff’s complaint, with leave to amend, on September 22, 2008. (Doc. 26.) Plaintiff filed an amended complaint on October 27, 2008. (Doc. 27.) On February 26, 2009, the Court ordered Plaintiff to effect service of the amended complaint within one-hundred twenty days. (Doc. 33.) On June 24, 2009, Plaintiff filed the Second Amended Complaint. (Doc. 39.) On July 6, 2009, Plaintiff filed a partial amendment to his Second Amended Complaint.<sup>1</sup> (Doc. 40.) On December 15, 2009, an order issued striking the partial amendment from the record and requiring Plaintiff to file a third amended complaint, if any, within thirty days or the second amended complaint would be deemed the operative pleading. (Doc. 49.) Over the last eleven months, Plaintiff has filed multiple notices indicating that a third

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<sup>1</sup> Plaintiff erroneously titled his second amended complaint a third amended complaint. Plaintiff’s description of the pleading as a third amended complaint is disregarded.

1 amended complaint is en route, pending, or completed, and would be mailed/filed shortly.  
2 (Docs. 41, 44-48, and 50-55.) However, Plaintiff did not file a third amended complaint such  
3 that Plaintiff's Second Amended Complaint, filed on June 24, 2009, was deemed the operative  
4 pleading in this case.<sup>2</sup>

5 On June 22, 2010, Plaintiff's Second Amended Complaint was screened was found to  
6 have stated cognizable claims against Defendants Phillips, Campos, Amaro, Clausing,  
7 Bardonnex, Sgt. Munoz, and Lt. Cartagina for using excessive physical force against Plaintiff  
8 and against Sgt. Munoz, Lt. Cartagina, Nurse Gregory, and Psyche Tech G. Hillard for deliberate  
9 indifference to Plaintiff's serious medical needs – all other Defendants and claims were  
10 dismissed. (Doc. 59.) In that same order, multiple notices which Plaintiff had filed indicating  
11 that a third amended complaint was en route, pending, or completed and would be mailed/filed  
12 shortly were stricken from the record. (Doc. 41, 44-48, and 50-57.) On June 18, 2010, Plaintiff  
13 filed yet another status report indicating that a third amended complaint was forthcoming, which  
14 was not entered on the docket until June 21, 2010 – at which time the screening order was  
15 already being processed for docketing, else this latest status report would have been stricken in  
16 the screening order as well. (Doc. 58.)

17 The Second Amended Complaint, filed June 24, 2009 is the operative pleading in this  
18 case. Accordingly, IT IS ORDERED that Plaintiff's status report, filed June 18, 2010 is  
19 STRICKEN from the record.

20  
21 IT IS SO ORDERED.

22 **Dated: June 23, 2010**

23 **/s/ Lawrence J. O'Neill**  
24 **UNITED STATES DISTRICT JUDGE**

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27  
28 <sup>2</sup> Plaintiff has exercised his right to amend once as a matter of course and may not amend again without  
leave of court. Fed. R. Civ. P. 15(a).