

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EDWARD DEMERSON,

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

Plaintiff,

ORDER GRANTING MOTION IN PART, AND
DIRECTING CLERK'S OFFICE TO SEND
PLAINTIFF COPY OF SECOND AMENDED
COMPLAINT FILED ON JUNE 24, 2009

v.

JEANNE S. WOODFORD, et al.,

(Doc. 65)

Defendants.

ORDER WARNING PLAINTIFF THAT IF HE
ATTEMPTS TO FILE A THIRD AMENDED
COMPLAINT IN CONTRAVENTION OF THE
COURT'S ORDERS, IT WILL BE STRICKEN

(Doc. 65)

Plaintiff Edward Demerson, a state prisoner proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983 on January 29, 2008. (Doc. 1.) Pursuant to the Court's order filed on June 22, 2010, this action is proceeding on Plaintiff's second amended complaint, filed June 24, 2009, against Defendants Phillips, Campos, Amaro, Clausing, Bardonnex, Munoz, and Cartagina for using excessive physical force against Plaintiff, and against Defendants Munoz, Cartagina, Gregory, and Hillard for deliberate indifference to Plaintiff's serious medical needs. (Doc. 59.) Plaintiff was ordered to effect service of process within one-hundred twenty days, and provided with a copy of the second amended complaint and the service documents. (Doc. 60.)

On July 14, 2010, Plaintiff filed what he entitled "Plaintiff's [sic] Ex Parte Motion for Order to Clerk to Service Missing Claim, to Plaintiff for Service to Defendant's [sic]." (Doc. 65.) In the motion, Plaintiff asserts that he received the order but the claim was missing and he cannot proceed

1 without it. Plaintiff requests a copy. Although it is not entirely clear, it appears that Plaintiff is
2 contending he did not receive a copy of the second amended complaint, which the Clerk's Office was
3 directed to provide. Plaintiff's motion will be granted to the extent that Plaintiff will be provided
4 with another copy of his second amended complaint so that he may initiate service of process.

5 Plaintiff also represents that he will be addressing the Court with respect to his third amended
6 complaint, and with a new third amended claim. Plaintiff has already amended once as a matter of
7 right, Fed. R. Civ. P. 15(a), and the Court very generously waited six months for the submission of
8 the third amended complaint in compliance with the order of December 15, 2009. (Doc. 49.)
9 Plaintiff failed to comply and the second amended complaint is now the operative pleading, with the
10 non-cognizable claims dismissed for failure to state a claim. The window of time within which to
11 file a third amended complaint without leave of court has expired. If Plaintiff attempts to file a third
12 amended complaint in contravention of the Court's orders, it will be stricken from the record.

13 Based on the foregoing, it is HEREBY ORDERED that:

- 14 1. Plaintiff's motion is granted in part and the Clerk's Office shall provide Plaintiff with
15 another copy of the second amended complaint filed on June 24, 2009; and
- 16 2. Plaintiff is warned that if he attempts to file a third amended complaint in
17 contravention of the Court's orders, it will be stricken from the record.

18
19 IT IS SO ORDERED.

20 **Dated: July 15, 2010**

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