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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GEORGE AARON, JR.,

Plaintiff,

v.

S. CANO, et al.,

Defendants.

CASE NO. 1:08-cv-00664-AWI-SKO PC

ORDER VACATING FINDINGS AND RECOMMENDATIONS

(Doc. No. 15)

and

ORDER DENYING MOTION

(Doc. No. 28)

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Plaintiff George Aaron, Jr. ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

**I. Discussion**

**A. May 28, 2009 Findings and Recommendations**

On May 28, 2009, the Court issued findings and recommendations that recommended that certain claims from Plaintiff's complaint be dismissed. (Doc. #15.) Plaintiff filed objections to those findings and recommendations on June 16, 2009. (Doc. #21.)

The Court issued the findings and recommendations after it received notice from Plaintiff that he wished to proceed only on the claims found to be cognizable in the Court's May 8, 2009 screening order. (Docs. #13, 14.) Plaintiff was unaware that proceeding on the cognizable claims meant dismissal of the non-cognizable claims. The Court allowed Plaintiff to file an amended complaint to cure the deficiencies in his non-cognizable claims. Plaintiff filed his amended

1 complaint on October 21, 2009. (Doc. #26.) The Court will, therefore, vacate the May 28, 2009  
2 findings and recommendations that recommended dismissal of those non-cognizable claims.

3 **B. Plaintiff's January 14, 2010 Motion**

4 On January 14, 2010, Plaintiff filed a motion requesting "Consideration or Omission of 8th  
5 Amendment Claim Alleged in First Amendment[sic] Complaint." (Doc. #28.) Plaintiff explains that  
6 he added a new Eighth Amendment claim in his amended complaint. Plaintiff notes that the Court's  
7 May 8, 2009 screening order warned Plaintiff not to add new, unrelated claims in his amended  
8 complaint. Plaintiff requests that the Court ignore or strike the Eighth Amendment claim raised in  
9 his amended complaint in order to avoid sanctions for Plaintiff's failure to obey the Court's order.

10 Rather than striking individual claims and sections from Plaintiff's complaint or requesting  
11 that Plaintiff to file a new amended complaint, the Court will screen Plaintiff's complaint at a later  
12 date. If Plaintiff's amended complaint improperly raises new claims, the Court will dismiss those  
13 improper claims. The Court will not sanction Plaintiff for raising a new and unrelated Eighth  
14 Amendment claim in his amended complaint.

15 **II. Conclusion and Order**

16 The Court finds that the May 28, 2009 findings and recommendations recommending  
17 dismissal of certain claims from Plaintiff's complaint should be vacated because Plaintiff elected  
18 to file an amended complaint that cured the deficiencies in those claims. Further, the Court will deny  
19 Plaintiff's request to strike portions of his amended complaint and will simply screen Plaintiff's  
20 complaint at a later date and dismiss any claims that were improperly raised.

21 Accordingly, it is HEREBY ORDERED that:

- 22 1. The Court's May 28, 2009 Findings and Recommendations are VACATED; and  
23 2. Plaintiff's January 14, 2010 motion is DENIED.

24  
25 IT IS SO ORDERED.

26 **Dated: June 4, 2010**

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE