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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

8 Arthur Gaspard,

9 Plaintiff,

10 vs.

11 D. Castillo, et al.,

12 Defendants.

) No. 1:08-cv-1484-DGC

) **ORDER**

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14 Plaintiff *pro se* and *in forma pauperis* Arthur Gaspard moves to amend his complaint.
15 Doc. 40. Defendants interpret this amendment as seeking to assert new claims under the
16 California constitution's prohibition on cruel and unusual punishment, as well as claims of
17 assault under state law. Doc. 42. Defendants oppose amendment, arguing in part that the
18 California constitution does not countenance a claim for damages arising from the
19 prohibition against cruel and unusual punishment, and that Plaintiff's claim of assault does
20 not comply with California's Government Claims Act. *Id.* Plaintiff has not filed a timely
21 reply.

22 Section 5 of Plaintiff's second amended complaint seeks as relief, in part,
23 "\$500,000.00 for [assault] under color of authority [cruel] and unusual punishment, pain and
24 suffering, and conspiring to bring about false charges (knowingly), and violating Plaintiff's
25 8th + 14th constitutional amendment rights" Doc. 14 at 3. The conspiracy claim was
26 dismissed by the Court on June 3, 2010 (Doc. 18). The current motion to amend proposes
27 to "amend relief section 1983." Doc. 40 at 1 (see caption). It also states that "Plaintiff is
28 asking for \$500,000.00 jointly and [separately] from Defendants D. Castillo and J. Soto for

1 [assault] under state law [cruel] and unusual punishment, pain and suffering, violations of
2 Plaintiff's 8th and 14th constitutional amendment rights." *Id.* at 1-2. Plaintiff's amendment
3 frames the changes he is trying to make to section "V. Relief" as "very small changes in his
4 request for relief." *Id.* at 2.

5 In light of the above language and representations, the Court is not persuaded that
6 Plaintiff's characterization of the amendment is correct: adding new freestanding claims for
7 violation of the state constitution and for assault are by no means "very small changes," as
8 such claims would be adding new causes of action rather than merely cleaning up the
9 "request for relief." Accordingly, the Court will decline the invitation to pass on important
10 matters of state constitutional and statutory law when doing so is unnecessary. The Court
11 will interpret Plaintiff's amendment as seeking to clarify that his \$500,000 in damages is
12 being sought "jointly and [separately]" from the two defendants, and that the conspiracy
13 claim is no longer being pursued. Such clarifications would be "very small changes" indeed.
14 But these "changes" does not require an amendment: the first "change" is merely a
15 clarification about how the damage amount in the complaint should be interpreted
16 (clarification that Defendants now have), and the second "change" is unnecessary because
17 the conspiracy claim was already dismissed by the Court. The Court will therefore deny the
18 motion to amend as moot.

19 Plaintiff also makes for the fourth time a request for appointment of counsel (Doc. 40
20 at 2) but fails to make the showing of exceptional circumstances required under 28 U.S.C.
21 § 1915(e)(1) and *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009), as already explained
22 by the Court (Docs. 10, 30). The Court will therefore deny the motion.

23 **IT IS ORDERED** that Plaintiff's motion (Doc. 40) is **denied** as stated above.

24 DATED this 18th day of July, 2011.

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28 David G. Campbell
United States District Judge