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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VIRGIL E. HOLT,

CASE NO. 1:09-cv-00800 AWI DLB PC

Plaintiff,

ORDER

v.

(Doc. 11)

R. NICHOLAS, et al.,

Defendants.

_____ / FORTY (40) DAY DEADLINE

Plaintiff Virgil E. Holt (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. By order issued October 1, 2009, the Court screened Plaintiff’s complaint and found that it stated a cognizable Eighth Amendment claim against the twenty-three named defendants. Plaintiff was forwarded service documents for completion and return within thirty days. On October 16, 2009, Plaintiff filed a request for an extension of time to do so, which was granted by order issued October 21, 2009.

Now pending before the Court is Plaintiff’s “Request to Postpone Process of Service Upon Defendants.” (Doc. 11.) Plaintiff states that he intends to file an amended complaint, and requests that service be postponed until after he files his amended complaint.

Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served. However, Plaintiff has not indicated when he will file a First Amended Complaint (“FAC”), and the Court will not hold this action in abeyance indefinitely.

1 Accordingly, within forty (40) days of service of this order, Plaintiff is HEREBY ORDERED

2 to either:

- 3 1. File a First Amended Complaint¹; or
- 4 2. File written notice stating that he wishes to proceed on his original complaint, filed
- 5 May 4, 2009. Plaintiff must also submit the completed service documents.

6 Failure to comply with this order will result in the dismissal of this action for failure to obey
7 a court order.

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9 IT IS SO ORDERED.

10 **Dated: November 16, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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¹ The United States Marshal will not be directed to serve the summons(es) and FAC until the FAC has been screened and found to state a cognizable claim. 28 U.S.C. §1915A(a); 28 U.S.C. 1915(e).