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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JESSE OLIVAS,

Plaintiff,

v.

DR. J. NEUBARTH,

Defendant.

CASE NO. 1:09-cv-00872-GSA PC

ORDER DENYING MOTION TO AMEND
AND FOR EXTENSION OF TIME

(Docs. 17 and 20)

ORDER FINDING SERVICE OF AMENDED
COMPLAINT APPROPRIATE, AND
FORWARDING SERVICE DOCUMENTS TO
PLAINTIFF FOR COMPLETION AND
RETURN WITHIN THIRTY DAYS

(Doc. 27)

This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by Plaintiff Jesse Olivas, a state prisoner proceeding pro se and in forma pauperis. Plaintiff filed this action on May 18, 2009, and his complaint was found to state a cognizable claim for relief by order filed on August 20, 2009. Plaintiff was ordered to complete and return service documents within thirty days so that service of process could be initiated. On September 8, 2009, Plaintiff filed a motion seeking an extension of time to comply with the order, and on September 14, 2009, Plaintiff filed a motion seeking leave to file an amended complaint. Plaintiff filed an amended complaint on September 15, 2009.

At this stage in the proceedings, Plaintiff may amend once as a matter of right. Fed. R. Civ. P. 15(a). Therefore, Plaintiff is not required to obtain leave of court to amend, and the amended complaint has been successfully filed. Plaintiff's motion seeking leave of court to amend is denied as unnecessary.

1 The Court has screened Plaintiff's amended complaint pursuant to 28 U.S.C. § 1915A, and
2 finds that it states a claim against Defendant Neubarth for violation of the Eighth Amendment. Fed.
3 R. Civ. P. 8(a)(2). Therefore, service of the amended complaint shall be authorized, and in light of
4 this order, Plaintiff's motion for an extension of time to comply with the Court's order of August 20,
5 2009, is denied as moot.

6 Accordingly, it is HEREBY ORDERED that:

- 7 1. Plaintiff's motions for an extension of time and for leave to amend are DENIED;
- 8 2. Service shall be initiated on the following defendant:

9 **J. NEUBARTH, M.D.**

- 10 3. The Clerk of the Court shall send Plaintiff one (1) USM-285 form, one (1) summons,
11 a Notice of Submission of Documents form, an instruction sheet and a copy of the
12 amended complaint filed September 15, 2009.
- 13 4. Within **thirty (30) days** from the date of this order, Plaintiff shall complete the
14 attached Notice of Submission of Documents and submit the completed Notice to the
15 Court with the following documents:
 - 16 a. Completed summons;
 - 17 b. Completed USM-285 form; and
 - 18 c. Two (2) copies of the endorsed amended complaint filed September 15, 2009.
- 19 5. Plaintiff need not attempt service on the defendant and need not request waiver of
20 service. Upon receipt of the above-described documents, the Court will direct the
21 United States Marshal to serve the above-named defendant pursuant to Federal Rule
22 of Civil Procedure 4 without payment of costs.
- 23 6. The failure to comply with this order will result in a recommendation that this action
24 be dismissed.

25
26 IT IS SO ORDERED.

27 **Dated: February 1, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE