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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GERALD A. WEST,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

1:09-CV-01277-LJO-DLB PC

ORDER VACATING FINDINGS AND  
RECOMMENDATIONS

(ECF NO. 19)

ORDER GRANTING LEAVE TO FILE  
THIRD AMENDED COMPLAINT WITHIN  
THIRTY (30) DAYS

Plaintiff Gerald A. West (“Plaintiff”) is a federal prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), which provides a remedy for violation of civil rights by federal actors. Plaintiff opened this action on July 22, 2009. On April 15, 2010, the undersigned screened Plaintiff’s second amended complaint pursuant to 28 U.S.C. § 1915A(a) and found that it stated cognizable claim against Defendant John Doe 2, but failed to state a claim against any other Defendants. The Court issued a Findings and Recommendations recommending dismissal of Defendants John Doe 1 and 3. On July 6, 2010, Plaintiff filed his objections. Plaintiff contends that he had relied upon misinformation when he submitted his second amended complaint, and requests leave to file a third amended complaint to clarify his allegations.

Plaintiff may be able to state a cognizable claim if given the opportunity to file a third amended complaint. *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc). The Court had not previously screened Plaintiff’s original or first amended complaint. Accordingly,

1 the Court will grant Plaintiff leave to file a third amended complaint.

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

- 3 1. The Court's Findings and Recommendations, filed April 15, 2010, is VACATED;
- 4 2. Plaintiff is granted leave to file a third amended complaint within **thirty (30) days**
- 5 from the date of service of this order; and
- 6 3. Failure to comply with this order will result in a recommendation of dismissal of
- 7 this action for failure to obey a court order.

8 IT IS SO ORDERED.

9 **Dated: August 3, 2010**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE

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