

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD ERNEST ANAYA,

Plaintiff,

v.

HERRINGTON, et al.,

Defendants.

CASE NO. 1:09-cv-01653-AWI-DLB PC

ORDER VACATING FINDINGS AND
RECOMMENDATIONS (DOC. 72)

ORDER DIRECTING CLERK OF THE
COURT TO FILE MOTION TO AMEND AS
FIFTH AMENDED COMPLAINT (DOC. 74)

_____ /

Plaintiff Richard Ernest Anaya (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation. Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On November 3, 2011, Plaintiff filed a fourth amended complaint, labeled as a motion to amend. On March 27, 2012, the District Judge assigned to this action issued an order granting Plaintiff leave to file a fourth amended complaint. On April 4, 2012, the undersigned issued a Findings and Recommendations recommending dismissal of the action for failure to state a claim, screening Plaintiff’s complaint filed November 3, 2011.

Pending before the Court is Plaintiff’s motion to amend, filed April 30, 2012. Plaintiff again labels it as a motion to amend, instead of a proposed amended complaint. In the interest of justice, the Court will treat this April 30, 2012 filing as Plaintiff’s amended complaint. The complaint will be screened pursuant to 28 U.S.C. § 1915A(a).

Accordingly, it is HEREBY ORDERED that:

- 1. The April 4, 2012 Findings and Recommendations is VACATED; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The Clerk of the Court is directed to file Plaintiff's motion to amend as a fifth amended complaint.

IT IS SO ORDERED.

Dated: May 9, 2012

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE