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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DERRICK J. THOMAS,

Plaintiff,

v.

STANISLAUS COUNTY, et al.,

Defendants.

CASE NO. 1:09-cv-02015-AWI-SKO PC

ORDER DISMISSING DUE PROCESS CLAIM
FOLLOWING RECEIPT OF PLAINTIFF'S
NOTICE OF WILLINGNESS TO PROCEED
ONLY ON COGNIZABLE EXERCISE CLAIM

(Docs. 9, 11, and 12)

_____/

Plaintiff Derrick J. Thomas, a pretrial detainee proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 17, 2009. On February 1, 2011, the Court dismissed Plaintiff's complaint, with leave to amend, for failure to state a claim. (Doc. 8.) Plaintiff filed an amended complaint on March 3, 2011, and on June 14, 2011, the Court issued an order finding that Plaintiff stated a cognizable claim arising out of the denial of adequate outdoor exercise. (Docs. 9, 11.) However, Plaintiff's claim arising out of his placement in solitary confinement was not cognizable, and the Court ordered Plaintiff to either file a second amended complaint or notify the Court of his willingness to proceed only on his exercise claim. (Doc. 11.) On July 7, 2011, Plaintiff filed a notice stating that he is willing to proceed only on the exercise claim. (Doc. 12.) Accordingly, Plaintiff's non-cognizable claim shall be dismissed and this action shall proceed only on the exercise claim.

In his notice, Plaintiff also requests to amend his claim for compensatory and punitive damages, if possible. While Plaintiff may not amend his complaint via his notice because a pleading

1 must be complete within itself, Local Rule 220, Plaintiff is not limited to the specific damages
2 amount set forth in his amended complaint, Fed. R. Civ. P. 54(c); Z Channel Ltd. Partnership v.
3 Home Box Office, Inc., 921 F.2d 1338, 1341 (9th Cir. 1991).

4 For the reasons set forth in the screening order filed on June 14, 2011, and in light of
5 Plaintiff's notice that he is willing to proceed only on his cognizable exercise claim, it is HEREBY
6 ORDERED that:

- 7 1. This action shall proceed on Plaintiff's amended complaint, filed on March 3, 2011,
8 against Defendants Stanislaus County Board of Supervisors, Stanislaus County
9 Sheriff's Department, Sheriff Adam Christianson, Policy Manager Gina Leguria,
10 Captain William Duncan, Lieutenants Ronald Lloyd and Gregg Clifton, and Sergeant
11 M. White on Plaintiff's due process claim arising out of the denial of adequate
12 outdoor exercise; and
- 13 2. Plaintiff's due process claim arising out of his placement in solitary confinement is
14 dismissed for failure to state a claim.

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17 IT IS SO ORDERED.

18 Dated: July 8, 2011

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20 CHIEF UNITED STATES DISTRICT JUDGE
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