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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD ABERCROMBIE,

1:11-cv-00048-GSA-PC

Plaintiff,

ORDER FOR PLAINTIFF TO NOTIFY COURT
OF HIS INTENTIONS
(Doc. 8.)

v.

DR. KAUT, et al.,

THIRTY DAY DEADLINE TO FILE WRITTEN
NOTICE TO THE COURT

Defendants.

_____ /

I. BACKGROUND

Richard Abercrombie (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on January 11, 2011. (Doc. 1.)

The Court screened the Complaint pursuant to 28 U.S.C. § 1915A and entered an order on November 22, 2011, requiring Plaintiff to either (1) file an amended complaint, or (2) notify the Court of his willingness to proceed with the original Complaint on the claims found cognizable by the Court. (Doc. 7.) On November 29, 2011, Plaintiff filed both an amended complaint and a notice informing the Court that he is willing to proceed on the claims found cognizable by the Court in the November 22, 2011 order. (Doc. 8.)

///

1 Plaintiff must explain his intentions in filing both an amended complaint and a notice to the
2 Court. Thus, Plaintiff shall be required to file a written notice to the Court within thirty days,
3 informing the Court whether:

4 (1) He wishes to proceed with the original Complaint filed on January 11, 2011, against
5 only defendant Dr. Kaut, on the medical claims found cognizable by the Court in the
6 November 22, 2011 order,

7 OR

8 (2) He wishes to proceed with the Amended Complaint filed on November 29, 2011.

9 If Plaintiff chooses to proceed with the original Complaint, the Court will begin the process
10 to initiate service upon defendant Dr. Kaut by sending Plaintiff service documents to complete and
11 return to the Court. Upon receipt of the service documents from Plaintiff, the Court shall direct the
12 United States Marshal to serve a summons and copy of the original Complaint on Dr. Kaut. The
13 Amended Complaint shall be stricken from the record, as if it had never been filed.

14 If Plaintiff chooses to proceed with the Amended Complaint, the Court shall schedule the
15 Amended Complaint for screening by the Court, to determine if Plaintiff has stated any cognizable
16 claims in the Amended Complaint. If the Court finds that Plaintiff has not stated any claims in the
17 Amended Complaint, the Court must dismiss the Amended Complaint pursuant to 28 U.S.C. §
18 1915A(b)(1),(2).

19 **II. ORDER**

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. Within thirty days from the date of service of this order, Plaintiff is required to send
22 written notice to the Court whether:

23 (1) He wishes to proceed with the original Complaint filed on January 11, 2011,
24 against only defendant Dr. Kaut, on the medical claims found cognizable by
25 the Court in the November 22, 2011 order,

26 OR

27 (2) He wishes to proceed with the Amended Complaint filed on November 29,
28 2011; and

2. The failure to comply with this order may result in the dismissal of this action.

IT IS SO ORDERED.

Dated: December 14, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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