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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 CHARLES A. MILLER,
12 Plaintiff,
13 vs.
14 M. ADONIS, *et al.*,
15 Defendants.

Case No. 1:12-cv-00353-DAD-EPG-PC
ORDER REQUIRING DEFENDANTS TO
FILE RESPONSIVE PLEADINGS
THIRTY DAY DEADLINE

16 **I. PROCEDURAL BACKGROUND**

17 Charles A. Miller (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
18 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action was initiated by
19 civil complaint filed by Plaintiff in the Fresno County Superior Court on June 15, 2010 (Case
20 #10CECG02100). On March 8, 2012, defendants Adonis, Griffith, Gutierrez, Igbinsa,
21 Medina, and Mendez removed the case to federal court and requested the court to screen the
22 complaint under 28 U.S.C. § 1915A. (ECF Nos. 1, 2.) On March 8, 2012, defendants
23 California Department of Corrections and Rehabilitation (“CDCR”), Ahmed, Anderson,
24 Chudy, Duenas, Eddings, Pascual, and Walker joined in the Notice of Removal of Action.
25 (ECF No. 4.) On October 4, 2012, the Court¹ granted Defendants’ motion for the court to
26 screen the complaint. (ECF No. 16.)
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¹ All Magistrate Judge orders before October 12, 2015 were issued by Magistrate Judge Gary S. Austin.

1 On October 17, 2013, the Court dismissed the Complaint for violation of Rule 8(a) of
2 the Federal Rules of Civil Procedure, with leave to amend. (ECF No. 32.) On December 2,
3 2013, Plaintiff filed the First Amended Complaint. (ECF No. 35.) On June 19, 2014, the Court
4 issued an order striking the First Amended Complaint for Plaintiff's failure to comply with the
5 court's order of October 17, 2013. (ECF No. 40.) Plaintiff was granted leave to file a Second
6 Amended Complaint. (Id.) On August 13, 2014, Plaintiff filed the Second Amended Complaint.
7 (ECF No. 44.) The Court screened the Second Amended complaint on June 29, 2015. (ECF
8 No. 46) The Court found that Plaintiff's Second Amended Complaint stated a cognizable
9 Eighth Amendment medical claim against defendant Officer M. Medina for not allowing him to
10 sit down instead of standing, but found that the Second Amended Complaint failed to state any
11 other claims. (ECF No. 46). The Court gave Plaintiff a choice of going forward on that one
12 claim or further amending his complaint.

13 On July 10, 2015, Plaintiff filed a motion for reconsideration, asking for District Court
14 to conduct a *de novo* review and arguing that the Magistrate Judge erred in dismissing all but
15 one claim (with leave to amend). (ECF No. 47) On July 16, 2015, District Judge Lawrence J.
16 O'Neill denied Plaintiff's motion for reconsideration. (ECF No. 47)

17 Plaintiff filed a Third Amended Complaint on July 31, 2015. (ECF No. 49) The Court
18 screened Plaintiff's Third Amended Complaint and found that it stated cognizable claims for
19 against Defendants Medina, Chudy and Frederichs for Deliberate Indifference to Serious
20 Medical Needs in violation of the Eighth Amendment, as well as for violation of Government
21 Code § 845.6. The Court found that the Third Amended Complaint also stated a related Bane
22 Act claim against Defendant Medina. The Court also found that it stated cognizable claims
23 against Defendants Eddings and Walker for Retaliation in violation of the First Amendment, as
24 well as for violation of the Bane Act. The Court gave Plaintiff the choice of proceeding only
25 on the claims found cognizable by the Court, or indicating that he does not agree to proceed
26 only on those claims, subject to findings and recommendations consistent with the Court's
27 order.

28 On October 5, 2016, Plaintiff notified the Court that he wished to proceed on the claims

1 found cognizable “so long as plaintiff’s doing do [sic] is not, and will not be, construed in
2 anyway as an expressed, or implied, waiver, forfeiture, [sic] abandonment or consent to
3 involuntary dismissal, of the remaining claims.” (ECF No. 61, emphasis in original). Plaintiff
4 indicated that he reserved his right to de novo review before the District Court.

5 Findings and Recommendations were issued on January 9, 2017, regarding Plaintiff’s
6 Third Amended Complaint. (ECF No. 67.) The Findings and Recommendations were adopted
7 in full on May 16, 2017. (ECF No. 69.) The following claims remain in the case:

- 8 a. A claim of deliberate indifference under the Eighth Amendment, against
9 defendants Medina, Chudy, and Frederichs;
10 b. A claim under the Bane Act against defendant Medina; and
11 c. Claims for retaliation under the First Amendment and the Bane Act, against
12 defendants Eddings and Walker;

13 (*Id.*)

14 **II. ORDER**

15 This litigation shall proceed to the next phase of the case.

16 The Court hereby orders the remaining defendants to file responsive pleadings to
17 Plaintiff’s Third Amended Complaint within 30 days of this order.

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19 IT IS SO ORDERED.

20 Dated: May 18, 2017

21 /s/ Eric P. Grogan
22 UNITED STATES MAGISTRATE JUDGE
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