## 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 JOSE LUIS BUENROSTRO, Case No.: 1:14-cv-00075-BAM PC 12 ORDER GRANTING MOTION TO AMEND THE Plaintiff, COMPLAINT (ECF No. 13) 13 v. ORDER DIRECTING CLERK OF COURT TO J. CASTILLO, et al., 14 FILE AMENDED COMPLAINT 15 Defendants. ORDER VACATING APRIL 15, 2014 ORDER 16 DISMISSING COMPLAINT WITH LEAVE TO **AMEND** 17 (ECF No. 16) 18 ORDER VACATING APRIL 15, 2014 ORDER 19 DENYING MOTION FOR TEMPORARY RESTRAINING ORDER WITHOUT PREJUDICE 20 (ECF No. 15) 21 22 23 Plaintiff Luis Buenrostro ("Plaintiff") is a federal prisoner proceeding pro se and in forma 24 pauperis in this civil action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971), which provides a remedy for violation of civil rights by 25 federal actors. Plaintiff consented to the jurisdiction of the Magistrate Judge. (ECF No. 5.) 26 27 Plaintiff initiated this action on January 17, 2014. The claims at issue arise out of incidents 28 occurring at FCI Mendota. (ECF No. 1.)

On April 14, 2014, Plaintiff filed the instant motion to amend his complaint to identify a John Doe defendant. Plaintiff also lodged his proposed first amended complaint. (ECF Nos. 12, 13.) Plaintiff's motion was not entered on the Court's docket until April 15, 2014.

On April 15, 2014, the Court also screened Plaintiff's original complaint and identified certain legal and pleading deficiencies. The Court dismissed Plaintiff's complaint and granted him leave to amend within thirty days. (ECF No. 16.) Based on the dismissal, the Court also denied Plaintiff's pending motion for a temporary restraining order without prejudice because there was no longer a case or controversy pending before the Court. (ECF No. 15.)

At the time of Plaintiff's motion to amend, he had not previously amended and therefore, he was entitled to amend once as a matter of right. Fed. R. Civ. P. 15(a)(1). Plaintiff's motion to amend shall be granted and the Clerk of the Court will be directed to file Plaintiff's proposed amended complaint. As the amended pleading superseded the original complaint, the Court shall vacate the order dismissing the original complaint with leave to amend and the order denying the motion for temporary restraining order. The Court will screen Plaintiff's amended complaint in due course.

Accordingly, IT IS HEREBY ORDERED as follows:

- 1. Plaintiff's motion to amend the complaint, filed on April 14, 2014, is GRANTED;
- 2. The Clerk of the Court is directed to file Plaintiff's first amended complaint, which was lodged with the Court on April 14, 2014;
- 3. The Court's Order Dismissing Complaint with Leave to Amend, issued on April 15, 2014, is VACATED. Plaintiff may disregard the April 15, 2014, dismissal order; and
- 4. The Court's Order Denying Motion for Temporary Restraining Order Without Prejudice, issued on April 15, 2014, is VACATED.

IT IS SO ORDERED.

Dated: April 16, 2014 /s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE