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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOSE LUIS BUENROSTRO,)	Case No.: 1:14-cv-00075-BAM PC
Plaintiff,)	
v.)	ORDER GRANTING MOTION TO STRIKE
)	AMENDED COMPLAINT
)	(ECF No. 20)
J. CASTILLO, et al.,)	
Defendants.)	ORDER DIRECTING CLERK OF COURT TO
)	FILE AMENDED COMPLAINT LODGED ON
)	MAY 5, 2014 AS FIRST AMENDED COMPLAINT
)	(ECF No. 21)
)	
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)	

Plaintiff Luis Buenrostro (“Plaintiff”) is a federal prisoner proceeding pro se and in forma 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 federal actors. Plaintiff consented to the jurisdiction of the Magistrate Judge. (ECF No. 5.) Plaintiff initiated this action on January 17, 2014. The claims at issue arise out of incidents occurring at FCI Mendota. (ECF No. 1.)

On April 14, 2014, Plaintiff filed a 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.

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

6 At the time of Plaintiff's motion to amend, he had not previously amended and he was entitled
7 to amend once as a matter of right. Fed. R. Civ. P. 15(a)(1). The Court therefore granted the motion
8 to amend and directed the Clerk of the Court to file Plaintiff's first amended complaint. As the
9 amended pleading superseded the original complaint, the Court also vacated the order dismissing the
10 original complaint with leave to amend and the order denying the motion for temporary restraining
11 order. (ECF No. 17.)

12 On April 24, 2014, Plaintiff filed the instant motion to strike his first amended complaint,
13 which was filed on April 14, 2014. (ECF No. 20.) Thereafter, on May 5, 2014, Plaintiff lodged a first
14 amended complaint. (ECF No. 21.)

15 Plaintiff asks that the Court strike his first amended complaint filed on April 14, 2014, because
16 it crossed in the mail with the Court's order dismissing the original complaint. Although the Court has
17 vacated its order dismissing the original complaint, Plaintiff's request to strike his first amended
18 complaint shall be granted. The Court has not conducted its screening of the first amended complaint
19 and Plaintiff has lodged another first amended complaint. As such, the Clerk of the Court shall be
20 directed to file the amended complaint lodged on May 5, 2014, as the First Amended Complaint. The
21 First Amended Complaint shall be screened in due course.

22 For the reasons stated, IT IS HEREBY ORDERED as follows:

- 23 1. Plaintiff's motion to strike the first amended complaint filed on April 14, 2014, is
24 GRANTED; and

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2. The Clerk of the Court is directed to file the amended complaint lodged on May 5, 2014, as the First Amended Complaint.

IT IS SO ORDERED.

Dated: May 15, 2014

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE