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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMAR R. HEARNS,
Plaintiff,
v.
R. GONZALES, et al.,
Defendants.

CASE NO. 1:14-cv-01177-DAD-MJS (PC)
ORDER (1) VACATING FINDINGS AND RECOMMENDATIONS GRANTING PLAINTIFF’S MOTION TO AMEND (ECF No. 25.); (2) DEEMING THIRD AMENDED COMPLAINT (ECF No. 19) AMENDED TO SUBSTITUTE CORRECTIONAL SERGEANT OLSEN IN PLACE OF DOE 1 AS DEFENDANT; AND (3) DIRECTING CLERK’S OFFICE TO AMEND COURT RECORDS TO REFLECT SUBSTITUTION

I. PROCEDURAL HISTORY

Plaintiff, a state prisoner incarcerated at Valley State Prison (“VSP”), initiated this action, *pro se*, on June 2, 2014, in Madera County Superior Court. (Notice of Removal, ECF No. 2, Ex. A.) Defendant Gonzales removed the matter to this Court on July 25, 2014, pursuant to 28 U.S.C. § 1441(a), based upon the Court’s original jurisdiction under 28 U.S.C. § 1331.

The Court screened Plaintiff’s Complaint, First Amended Complaint, Second Amended, and Third Amended Complaint. (ECF Nos. 7, 10, 18, 20.) On August 5, 2015, the Court issued Findings and Recommendations to allow Plaintiff to proceed on

1 his retaliation, Equal Protection, and state law conversion claims against Defendants
2 Gonzales and Doe 1. (ECF No. 20.) Plaintiff then moved to amend his Third Amended
3 Complaint to identify Defendant Doe 1 as Correctional Sergeant Olsen. (ECF No. 23.)
4 On September 29, 2015, the Court issued Findings and Recommendations to grant
5 Plaintiff's motion to amend his Third Amended Complaint and to vacate the August 5,
6 2015 Findings and Recommendations. (ECF No. 25.)

7 **II. MOTION TO AMEND TO SUBSTITUTE DOE 1 WITH DEFENDANT'S REAL**
8 **NAME**

9 Plaintiff moved to file a Fourth Amended Complaint to identify Defendant Doe 1 as
10 Correctional Sergeant Olsen. (ECF No. 23.) However, Plaintiff's Fourth Amended
11 Complaint does not identify Defendant Olsen by name in the facts section; Defendant
12 Doe 1 is still named. (ECF No. 24 at 7-8.) Plaintiff also deleted his state causes of
13 action which the Court found were not cognizable.

14 Given Plaintiff does not seek to amend those claims against Defendants that the
15 Court found cognizable or add new claims to his Third Amended Complaint, the
16 Court will deem Plaintiff's Third Amended Complaint amended to replace Defendant Doe
17 1 with Defendant's real name – Correctional Sergeant Olsen. Plaintiff's motion for leave
18 to file a Fourth Amended Complaint (ECF No. 23.) is denied, and the Court's September
19 29, 2015 Findings and Recommendations are vacated.

20 **III. CONCLUSION AND ORDER**

21 Based on the foregoing, the Court HEREBY ORDERS as follows:

- 22 1. The September 25, 2015 Findings and Recommendations (ECF No. 25)
23 are vacated;
- 24 2. Plaintiff's motion to file a Fourth Amended Complaint (ECF No. 23.) is
25 DENIED. Pursuant to Federal Rule of Civil Procedure 15, Plaintiff's Third
26 Amended Complaint (ECF No. 19) is deemed amended to substitute
27 Correctional Sergeant Olsen in place of Doe 1; and
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3. The Clerk's Office is directed to amend the court records to reflect this substitution.

IT IS SO ORDERED.

Dated: December 14, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE