

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

MIKE BAKER,

Plaintiff,

V.

S. CACOA, et al.,

Defendants.

) Case No.: 1:15-cv-00693-AWI-BAM (PC)
)
) ORDER FINDING SERVICE OF FIRST
) AMENDED COMPLAINT APPROPRIATE
) AGAINST CERTAIN DEFENDANTS, AND
) FORWARDING SERVICE DOCUMENTS TO
) PLAINTIFF FOR COMPLETION AND RETURN
) WITHIN THIRTY DAYS
)
) FINDINGS AND RECOMMENDATIONS
) RECOMMENDING DISMISSAL OF CERTAIN
) CLAIMS AND DEFENDANTS
)
) **THIRTY-DAY DEADLINE**
)
)

Plaintiff Mike Baker is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

On April 20, 2017, the Court screened Plaintiff's first amended complaint pursuant to 28 U.S.C. § 1915A, and found that it stated a cognizable claim against Defendants Ponce De Leon and Vasquez for retaliation in violation of the First Amendment, and against Defendants Cacoa, Ponce De Leon, Guizar, Vasquez, Singh and Jane Doe for deliberate indifference to serious medical needs in violation of the Eighth Amendment, medical malpractice, violations of California Government Code § 845.6, and negligent infliction of emotional distress.¹ Fed. R. Civ. P. 8(a); Ashcroft v. Iqbal, 556 U.S.

¹ Defendant Singh was erroneously sued as “Seng.”

1 662, 678 (2009); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). The Court further found
2 that Plaintiff failed to state any other cognizable claims. Plaintiff was ordered to either file a second
3 amended complaint or notify the Court that he was willing to proceed only on the cognizable claim.
4 (ECF No. 20.)²

5 On May 25, 2017, Plaintiff notified the Court that he did not intend to file any second amended
6 complaint and wished to proceed only with the cognizable claims identified by the Court. (ECF No.
7 22.) Thus, the Court finds it appropriate to order service of the first amended complaint on Defendants
8 Ponce De Leon, Vazquez, Cacao, Guizar, and Singh. The Court will further recommend the dismissal
9 of all other claims and Defendants for the failure to state a claim, for the reasons discussed in the April
10 20, 2017 screening order.

11 Accordingly, IT IS HEREBY ORDERED as follows:

12 1. Service is appropriate for defendant:

13 **Y. Ponce De Leon, Registered Nurse**

14 **L. Vasquez, Registered Nurse**

15 **S. Cacao, Registered Nurse**

16 **D. Guizar, Registered Nurse**

17 **Singh, Licensed Vocational Nurse**

18 2. The Clerk of the Court shall send to Plaintiff five (5) USM-285 forms, five (5) summons, a
19 Notice of Submission of Documents form, an instruction sheet and a copy of the first
20 amended complaint, filed January 3, 2017 (ECF No. 19);
21 3. Within **thirty (30) days** from the date of this Order, Plaintiff shall complete the attached
22 Notice of Submission of Documents and submit the completed Notice to the Court with the
23 following documents:

24 a. One completed summons for each of the defendants listed above;

25 b. One completed USM-285 form for each of the defendants listed above; and

27 _____
28 ² A separate order will issue regarding Plaintiff's duty to file a motion to substitute the identity of Defendant
Jane Doe.

c. Six (6) copies of the endorsed first amended complaint, filed January 3, 2017 (ECF No. 19);

4. Plaintiff need not attempt service on the defendant and need not request waiver of service. Upon receipt of the above-described documents, the Court will direct the United States Marshal to serve the above-named defendant pursuant to Federal Rule of Civil Procedure 4 without payment of costs;
5. **Plaintiff's failure to comply with this order will result in a recommendation that this action be dismissed for failure to obey a court order and failure to prosecute.**

* * *

Also, the Court HEREBY RECOMMENDS that Defendants E. Beam, Vagel, Cuevas, T. Caldwell, and R. Cervantes, and all other claims not found to be cognizable as stated above, be dismissed for failure to state a claim upon which relief may be granted.

These findings and recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provision of 28 U.S.C. §636 (b)(1)(B). Within **thirty (30) days** after being served with these Finding and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **June 1, 2017**

/s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE