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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TONY ASBERRY,
Plaintiff,
v.
WARDEN BITER, et al.,
Defendants.

Case No. 1:16-cv-01741-DAD-MJS (PC)

ORDER GRANTING MOTION TO NAME DEFENDANT

(ECF NO. 9)

ORDER DEEMING COMPLAINT (ECF No. 1) AMENDED TO SUBSTITUTE C. RELEVANTE IN PLACE OF DOE 3

ORDER DIRECTING CLERK'S OFFICE TO CORRECT THE DOCKET TO REFLECT SUBSTITUTION

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The Court screened Plaintiff's complaint (ECF No. 1), and found that it stated the following cognizable claims: an Eighth Amendment claim for medical indifference against Defendants Lozovoy and Doe 3; and Eighth Amendment conditions of confinement and First Amendment retaliation claims against Defendants Ferris and Godfrey. The remaining claims were not cognizable as pled. (ECF No. 5.)

1 Plaintiff was ordered to file an amended complaint or notify the Court in writing if
2 he wished to proceed only on the cognizable claims. (Id.) Plaintiff responded that he
3 does not wish to amend and instead wishes to proceed with the cognizable claims.
4 (ECF No. 7.) The Court will, by separate order, address dismissal of the non-cognizable
5 claims and service of the cognizable claims.

6 Presently before the Court is Plaintiff's "Motion to Name Defendant." (ECF No.
7 9.) The Court construes the motion as a request to amend the complaint to substitute
8 Physician Assistant C. Relevante in place of Doe 3. Plaintiff states that he has obtained
9 medical records identifying Relevante as the person who treated him on June 8, 2016,
10 the date on which Plaintiff alleged he was seen by Doe 3.

11 Based on Plaintiff's submission, it appears that C. Relevante is the name of the
12 individual whose actions are at issue in this case. Accordingly, the Court will deem
13 Plaintiff's complaint amended to substitute C. Relevante in place of Defendant Doe 3.

14 Based on the foregoing, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff's "Motion to Name Defendant" (ECF No. 9), construed as a motion
16 to amend, is GRANTED;
- 17 2. Plaintiff's complaint (ECF No. 1) is deemed amended to substitute C.
18 Relevante in place of Defendant Doe 3;
- 19 3. The Clerk's Office is directed to correct the docket to reflect the
20 substitution.

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22 IT IS SO ORDERED.

23 Dated: February 17, 2017

24 /s/ Michael J. Seng
25 UNITED STATES MAGISTRATE JUDGE
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