

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES ALFRED CUNHA,  
Plaintiff,  
v.  
CALIFORNIA FORENSIC MEDICAL  
GROUP, et al.,  
Defendants.

**CASE NO. 1:17-cv-00094-DAD-MJS  
(PC)**  
**ORDER VACATING ECF NO. 15**  
**CORRECTED ORDER DIRECTING  
PLAINTIFF TO FILE EITHER AN  
AMENDED COMPLAINT, A REQUEST  
FOR RECONSIDERATION, A NOTICE  
OF APPEAL, OR A STATEMENT OF  
INTENT TO STAND ON HIS FIRST  
AMENDED COMPLAINT**  
**(ECF No. 14)**  
**FOURTEEN DAY DEADLINE**

This Court's June 15, 2017, Order (ECF No. 15) in this case contains errors, and is hereby VACATED. Plaintiff should disregard it.

Plaintiff is a county jail inmate proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On May 16, 2017, Plaintiff's first amended complaint was dismissed and he was given thirty days leave to amend. (ECF No. 13.)

1           On June 9, 2017, Plaintiff filed a “Motion to File an Appeal.” (ECF No. 14.) Plaintiff  
2 complains that his limited education and lack of access to legal resources have rendered  
3 him unable to “complete [his] civil rights complaint to the Court’s satisfaction.”

4           It is unclear from this filing what Plaintiff wishes to do. Because the Court is unable  
5 to discern how Plaintiff wishes to proceed, his Motion to File an Appeal will be denied  
6 without prejudice.

7           To the extent Plaintiff seeks higher review, his case is not yet ripe (ready) for  
8 review by the District Court Judge or the Ninth Circuit Court of Appeal because, since this  
9 Court granted leave to amend to address the deficiencies identified by the Court, there is  
10 as yet no dispositive order for him to appeal.

11           To the extent Plaintiff wants to ask this Court to reconsider its screening, he does  
12 not say what part of the Order he wants reconsidered and he does not identify grounds  
13 for reconsideration.

14           Plaintiff is reminded that he was granted “leave to amend”. That gives him an  
15 opportunity to try to fix what was wrong with his first amended complaint. If he chooses  
16 to amend, he can and should review the Court’s Order to see what problems and  
17 deficiencies the Court found with the first amended complaint and then try to correct them  
18 in a revised version of that complaint called a “Second Amended Complaint.” He does not  
19 need legal training to do that.

20           If Plaintiff wishes to stand on his first amended complaint despite the  
21 deficiencies that have been identified, he should so state. If he does, the  
22 undersigned will recommend the case be dismissed for failure to state a claim, and  
23 Plaintiff may challenge that recommendation before the District Court Judge and, if  
24 unsuccessful there, in the appellate court.

25           Lastly, if Plaintiff intends to pursue an unauthorized interlocutory appeal to the  
26 Ninth Circuit based on the present record, he should file a notice of appeal clearly  
27 identifying the specific order he wishes to appeal from.

28

1 Thus, Plaintiff is hereby ORDERED to notify the Court, within fourteen  
2 days, whether he seeks reconsideration of the undersigned's screening Order; if so,  
3 he must identify where he thinks the Order is wrong and why he thinks it is wrong.  
4 Otherwise, he must, within fourteen days of this order, file either an amended  
5 complaint, a notice that he wishes to stand and proceed on his First Amended  
6 Complaint, a notice of appeal, or a notice of voluntary dismissal. Failure to respond to  
7 this order may result in the dismissal of Plaintiff's case for failure to prosecute.

8  
9 IT IS SO ORDERED.

10 Dated: June 16, 2017

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28