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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GENGHIS KHAN ALI STEVENSON,

Plaintiff,

v.

M. CURNEL, et al.,

Defendants.

Case No. 1:17-cv-00764-LJO-SAB (PC)

ORDER DIRECTING PLAINTIFF TO FILE
A SECOND AMENDED COMPLAINT OR
NOTIFY COURT OF INTENT TO
PROCEED ON CLAIM FOUND TO BE
COGNIZABLE

(ECF No. 9.)

Plaintiff Genghis Khan Ali Stevenson is a state prisoner appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff declined United States Magistrate Judge Jurisdiction, therefore this matter was referred to undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.¹

Plaintiff filed his initial complaint on June 5, 2017. Currently before the Court is Plaintiff's first amended complaint, filed on June 29, 2017.

I.

SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that "fail[] to state a claim on which relief may be granted," or

¹ Plaintiff declined United States Magistrate Jurisdiction on March 10, 2017. (ECF No. 5.)

1 that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §
2 1915(e)(2)(B).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
7 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each
8 named defendant personally participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-
9 677; Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

10 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
11 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d
12 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be
13 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
14 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss
15 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant
16 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s
17 liability” fall short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d
18 at 969.

19 II.

20 COMPLAINT ALLEGATIONS

21 Plaintiff is a state inmate in the custody of the California Department of Corrections and
22 Rehabilitation (“CDCR”). Plaintiff is currently incarcerated at Corcoran State Prison (“CSP”),
23 and the events at issue occurred when Plaintiff was incarcerated at CSP.

24 Plaintiff names the following individuals as defendants: M. Curnel, correctional officer at
25 CSP; J. Caldwell, correctional officer at CSP; A. Randolph, correctional lieutenant at CSP; M. L.
26 Oliveira; correctional counselor II at CSP; M. Sexton; chief deputy warden at CSP; T. Lee; third
27 level appeal examiner; M. Voong, third level chief of appeals; and San Diego Reference
28 Laboratory.

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1 On October 11, 2016, Defendant Caldwell served Plaintiff with a rules violation report
2 (“RVR”) cd2-115, alleging on September 6, 2016, Plaintiff’s urine analysis tested positive for
3 TCH. Plaintiff informed Defendant Caldwell, there must be a mix-up because he did not submit
4 a urinalysis test on September 6, 2016 or any other time during his incarceration at CSP.
5 Defendant Caldwell responded that he only serves the RVR. Plaintiff requested an investigative
6 employee (“I.E.”) to assist him in locating and interviewing witness, as well as, assistance
7 gathering documentation to support his defense for misidentification. Defendant Caldwell told
8 Plaintiff, he is not in the segregation Unit and therefore an I.E. is not necessary. After being
9 denied by Defendant Caldwell, Plaintiff further pleaded that an I.E. is necessary to establish his
10 innocence in the misidentification. Plaintiff requires assistance in this matter due to the
11 complexity of locating witnesses and gathering documentation, which is why he needs an I.E.
12 Plaintiff informed Defendant Caldwell he left CSP for twelve days² and upon returning to CSP
13 he was placed in orientation status until³ a classification committee correctly classified him.
14 Being placed in orientation status restricted Plaintiff to his cell and he is unable to gather
15 documentation or witnesses due to his restrictions. Plaintiff asserts, he is entitled to an I.E.
16 pursuant to Title 15 of the California Code of Regulations section 3315(d)(1)(A)(2), “when
17 housing status makes it unlikely the charged inmate can collect and present the evidence
18 necessary for an adequate presentation of defense.” Subsequently, Defendant Caldwell denied
19 Plaintiff’s request for an I.E..

20 Plaintiff further asserts that the delivery of RVR violated the time restraints of discovery,
21 as it was delivered to him nineteen days after the discovery date.

22 Plaintiff’s first Hearing

23 On October 23, 2016, Plaintiff appeared before senior hearing officer (SHO) Lieutenant
24 Gonzales to be heard on Plaintiff’s alleged RVR violation. Defendant Gonzales asked Plaintiff,
25 “how does he plea?” Plaintiff informed SHO Gonzales, he was not prepared to proceed forward
26 on this matter, as he was still investigating and developing his defense. Plaintiff further alleges
27 he was denied the assistance of an I.E. and required the assistance of an I.E. in order to proceed

28 ² Plaintiff left CSP on September 23, 2016 to October 4, 2016.

³ Plaintiff was placed on orientation status from October 4, 2016 to October 19, 2016.

1 forward in his defense. Plaintiff said the denial of an I.E. rendered him unable to gather the
2 required documents and he was unable to locate witnesses relevant in his not guilty defense.
3 SHO Gonzales asked Plaintiff, “What documentation are talking about?” Plaintiff responded he
4 requires access to the list of individuals who submitted a urine analysis on September 6, 2016,
5 the sign-in or signature logs for the chain of custody, “The Random Selection list, and logbooks
6 for CD2 form 1849, CDCR form 2249, and any other documentation relevant or material to this
7 urine sample test. Plaintiff alleges, SHO Gonzales agreed with Plaintiff and postponed the
8 hearing pending further investigation based on Plaintiffs claim of innocence due to
9 misidentification. Plaintiff agreed to the terms and conditions of the bifurcation of the
10 proceedings, in that of locating and interviewing witnesses, and gathering documents. Plaintiff
11 alleges, SHO Gonzales and Defendant Randolph, did not document the proceeding of October
12 23, 2016, but in the Disciplinary Hearing Results (“DHR”) it states Plaintiff entered a “not
13 guilty” plea. Plaintiff cites to the Title 15 of the California Code of Regulations section 3320 (e),
14 which states in pertinent part, “[i]f a hearing is postponed for any reasons, such reason shall be
15 documented in findings section of the CDC form 115.”

16 Second Administrative meeting

17 On October 24, 2016, Plaintiff was told by Defendant Randolph that he is adjudicating
18 the RVR matter. Plaintiff told Defendant Randolph that SHO Gonzalez was allowing him time
19 to investigate and collect documents due to the complexity of the issue and because his
20 movements were restricted while on orientation status. Defendant Randolph stated, “you[’re] not
21 getting none of that.” Plaintiff made another request for an I.E., subsequently, his request was
22 denied by Defendant Randolph. Plaintiff further argued, he was not prepared to move forward
23 without two material witnesses: (1) inmate Palmer (No. G58773) and (2) inmate Farmer (No.
24 F74068); who were prepared to testify as to the process of random urine testing and as to the
25 procedure. Plaintiff also wanted to call the Drug Testing Coordinator to testify as to the
26 accuracy of the urinalysis logs, but that would be impossible for him to do. Plaintiff alleges
27 Defendant Randolph gave no explanation as to why Plaintiff’s request for an I.E. and subsequent
28 requests were denied. Rather, Defendant Randolph only said “No.”

1 A hearing was subsequently held in Defendant Randolph's office where he interviewed
2 reporting employee, Defendant Curnel, Defendant Randolph asked, "did Stevenson give you a
3 urine test?" and Defendant Curnel replied, he recalled collecting a sample from Plaintiff that day.
4 Plaintiff alleges, in accordance to CSP Corcoran procedure 52010.18, urine sample collection
5 procedures, "confirm the identity of an inmate by picture identification and to "recall" is not a
6 positive identification. Plaintiff asserts, Defendant Randolph, as a finder of fact should not have
7 relied on the untrustworthy memory of Defendant Curnel; instead he should have followed the
8 procedure protocol which governs chain of custody identification. Consequently, Plaintiff was
9 found guilty of the RVR violation.

10 Appellate Review Process

11 Plaintiff followed the prison grievance process and submitted a CDCR 602 form. In
12 Plaintiff's grievance, he explained in great detail the unfairness he encountered during his
13 administrative hearing, by being denied the ability to call witnesses, the denial of I.E., and the
14 denial of chain of custody documentation.

15 Plaintiff alleges, the second level response not only misinterprets but also misrepresents
16 the facts that occurred during his hearing. Plaintiff contends Defendant Randolph claims that he
17 documented that Plaintiff did not meet the criteria for an assignment of an I.E, when all
18 Defendant Randolph said was "No." In addition, the third level of review reaffirmed the prior
19 decisions.

20 Plaintiff further alleges, this violation has made him not eligible for early parole and this
21 ordeal has caused him to suffer from emotional and psychological distress. Plaintiff is seeking
22 both compensatory and punitive damages as well as, requesting a bench trial.

23 **III.**

24 **DISCUSSION**

25 Plaintiff brings this action alleging violation of the Due Process Clause and Equal
26 Protection under the Fourteenth Amendment and in violation of false Claims Act 31 U.S.C 3729-
27 3733.

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1 **A. 1983 claims**

2 Section 1983 provides a cause of action for the violation of a plaintiff’s constitutional or
3 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d
4 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);
5 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). To state a claim under section 1983,
6 Plaintiff is required to show that (1) each defendant acted under color of state law and (2) each
7 defendant deprived him of rights secured by the Constitution or federal law. Long, 442 F.3d at
8 1185. There is no respondeat superior liability under section 1983, and therefore, each defendant
9 is only liable for his or her own misconduct. Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009). To
10 state a claim, Plaintiff must demonstrate that each defendant personally participated in the
11 deprivation of his rights. Jones, 297 F.3d at 934. In other words, to state a claim for relief under
12 section 1983, Plaintiff must link each named defendant with some affirmative act or omission
13 that demonstrates a violation of Plaintiff’s federal rights. Simmons v. Navajo County, Ariz., 609
14 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir.
15 2009); Jones, 297 F.3d at 934.

16 **B. Respondeat Superior**

17 While Plaintiff names Warden Sherman, T. Lee, and M. Voong, as Defendants in this
18 action, the complaint is devoid of any factual allegations regarding any conduct by Defendants
19 Warden Sherman, Lee, and Voong. Plaintiff’s allegations are conclusory statements at best.
20 Rather, it appears that Plaintiff seeks to hold Defendants Warden Sherman, Lee, and Voong
21 liable based upon their positions at CSP under the respondeat superior liability. As there is no
22 respondeat superior liability under section 1983, Plaintiff has failed to state a claim against
23 Defendants Warden Sherman, Lee, and Voong.

24 **C. Due Process**

25 The Fourteenth Amendment’s Due Process Clause protects persons against deprivations
26 of life, liberty, or property; and those who seek to invoke its procedural protection must establish
27 that one of these interests is at stake.” Wilkinson v. Austin, 545 U.S. 209, 221 (2005).

28 Plaintiff alleges that his due process was violated by the denial of an I.E. to aid him in
collecting documentation and locating witnesses. Due to Plaintiff being placed on orientation

1 status on October 4, 2016 to October 19, 2016, made him eligible to be assigned an I.E., as this
2 restricted his ability to collect any pertinent information in his defense. Furthermore, when a
3 prisoner has his movements restricted they are entitled to the assignment of an I.E. in order to aid
4 in the collection of documents so they may have an adequate defense. Cal. Code Regs. Tit. 15 §
5 3315(d)(1)(A)(3). Moreover, Plaintiff was denied the right to call witnesses, and these witnesses
6 were prepared to testify to the random testing and signing protocol.

7 “Prison disciplinary proceedings are not part of a criminal prosecution, and the full
8 panoply of rights due a defendant in such proceedings does not apply.” Wolff v. McDonnell,
9 418 U.S. 539, 556 (1974). With respect to prison disciplinary proceedings, the minimum
10 procedural requirements that must be met are: (1) written notice of the charges; (2) at least 24
11 hours between the time the prisoner receives written notice and the time of the hearing, so that
12 the prisoner may prepare his defense; (3) a written statement by the fact finders of the evidence
13 they rely on and reasons for taking disciplinary action; (4) the right of the prisoner to call
14 witnesses in his defense, when permitting him to do so would not be unduly hazardous to
15 institutional safety or correctional goals; and (5) legal assistance to the prisoner where the
16 prisoner is illiterate or the issues presented are legally complex. Id. at 563-71. As long as the
17 five minimum Wolff requirements are met, due process has been satisfied. Walker v. Sumner,
18 14 F.3d 1415, 1420 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S.
19 472 (1995). In addition, the hearing officer’s decision must be supported by “some evidence,”
20 Superintendent v. Hill, 472 U.S. 445, 455 (1985), having an indicia of reliability, Bruce v. Ylst,
21 351 F.3d 1283, 1287-88 (9th Cir. 2003); Cato v. Rushen, 824 F.2d 703, 705 (9th Cir. 1987). The
22 “some evidence” standard is not particularly stringent and the relevant inquiry is whether “there
23 is *any* evidence in the record that could support the conclusion reached. . . .” Hill, 472 U.S. at
24 455-56 (emphasis added). Based on Plaintiff’s allegations in the first amended complaint,
25 Plaintiff states a cognizable due process claim against senior hearing officer Defendant A.
26 Randolph for the failure to allow Plaintiff to present witnesses, failure to appoint an investigative
27 employee and the lack of evidence in support of the finding of guilt of the rules violation.
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1 **D. False Reports**

2 Plaintiff alleges that Defendants Oliveri, Curnel, and Caldwell intentionally filed false
3 reports against Plaintiff during his appeals process. However, the issuance of a false RVR or
4 false crime report does not, in and of itself, support a claim under section 1983. See, e.g., Ellis v.
5 Foulk, No. 14-cv-0802 AC P, 2014 WL 4676530, at *2 (E.D. Cal. Sept. 18, 2014) (“Plaintiff’s
6 protection from the arbitrary action of prison officials lies in ‘the procedural due process
7 requirements as set forth in Wolff v. McDonnell.’”) (citing Hanrahan v. Lane, 747 F.2d 1137,
8 1140 (7th Cir. 1984)); Solomon v. Meyer, No. 11-cv-02827-JST (PR), 2014 WL 294576, at *2
9 (N.D. Cal. Jan. 27, 2014) (“[T]here is no constitutionally protected right to be free from false
10 disciplinary charges.”) (citing Chavira v. Rankin, No. C 11-5730 CW (PR), 2012 WL 5914913,
11 at *1 (N.D. Cal. Nov. 26, 2012) (“The Constitution demands due process, not error-free decision-
12 making.”)); Johnson v. Felker, No. 1:12-cv-02719 GEB KJN (PC), 2013 WL 6243280, at *6
13 (E.D. Cal. Dec. 3, 2013) (“Prisoners have no constitutionally guaranteed right to be free from
14 false accusations of misconduct, so the mere falsification of a [rules violation] report does not
15 give rise to a claim under section 1983.”) (citing Sprouse v. Babcock, 870 F.2d 450, 452 (8th
16 Cir. 1989) and Freeman v. Rideout, 808 F.2d 949, 951-53 (2d. Cir. 1986)). Accordingly,
17 Plaintiff has failed to state a cognizable claim for relief.

17 **E. Inmate Appeals**

18 Plaintiff does not have a protected liberty interest in the processing of his appeals, and
19 therefore, he cannot pursue a claim for denial of due process with respect to the handling or
20 resolution of his appeals. Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v.
21 Adams, 855 F.2d 639, 640 (9th Cir. 1988)).

22 Plaintiff alleges he was denied an adequate appeals process because all three levels of
23 appeals were based on false information. A decision at the third level of review, known as the
24 director’s level of review, is not appealable. Cal. Code Regs. tit. 15, § 3084.8(c)(3). To the
25 extent Plaintiff seeks to bring claims based on the denial of his inmate appeals, Plaintiff does not
26 state a cognizable claim.

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1 **F. Equal Protection**

2 The Equal Protection Clause requires that all persons who are similarly situated should be
3 treated alike. Lee v. City of Los Angeles, 250 F.3d 668, 686 (2001); City of Cleburne v.
4 Cleburne Living Center, 473 U.S. 432, 439 (1985); Shakur v. Schriro, 514 F.3d 878, 891 (9th
5 Cir. 2008). There are two ways for a plaintiff to state an equal protection claim. A plaintiff can
6 state a claim for violation of the Equal Protection Clause, by showing “that the defendant acted
7 with an intent or purpose to discriminate against him based upon his membership in a protected
8 class.” Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003). Intentional in this context
9 means that the defendant acted, at least in part, because of the plaintiff’s membership in a
10 protected class. Serrano, 345 F.3d at 1082. Alternately, the plaintiff can state a claim by
11 alleging that he was intentionally treated differently than similarly situated individuals and there
12 was no rational basis for the difference in treatment. Thornton v. City of St. Helens, 425 F.3d
13 1158, 1167 (2005); Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

14 While Plaintiff alleges that Defendant Curnel discriminated against him by not providing
15 him with accurate urinalysis testing, there are no allegations made by Plaintiff that he is entitled
16 to the protection afforded under the equal protection clause of the fourteenth amendment, as he
17 has not alleged he is a member of a protected class. Furthermore, Plaintiff also makes no
18 allegations that he was intentionally treated differently than other prisoners. Rather, Plaintiff’s
19 complaint is devoid of any factual allegations from which the Court can infer that Defendant
20 Curnel engaged in the misconduct alleged. Iqbal, 556 U.S. at 678. Plaintiff’s conclusory
21 allegations fail to state a claim against defendant. Accordingly, Plaintiff fails to state a
22 cognizable equal protection claim.

22 **G. False Claims Act**

23 The False Claims Act creates a cause of action for the United States to recover economic
24 losses incurred from fraudulent claims for payment. 31 U.S.C § 3729. The Attorney General
25 pursues such actions on behalf of the government. Id. at § 3730(a). Alternatively, under the
26 statute’s “qui tam” provision, private whistleblowers-“relators”-who have evidence of fraud, may
27 assert the government’s claim on its behalf. Id. § 3730(b).

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1 Plaintiff invokes the False Claims Act, but it is not entirely clear from the face of the
2 complaint what he is claiming. Plaintiff complaint is devoid of any of any factual allegations
3 regarding any conduct by San Diego Reference Laboratory. Accordingly, Plaintiff’s conclusory
4 allegations fail to state a claim against under the False Claims Act.

5 **IV.**

6 **CONCLUSION AND ORDER**

7 Plaintiff’s first amended complaint states a cognizable claim for damages against
8 Defendant Randolph for a due process violation. Plaintiff has not sufficiently alleged facts for
9 any other claims against any of the other named Defendants. The Court will provide Plaintiff
10 with the opportunity to file an amended complaint curing the deficiencies identified by the Court
11 in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change
12 the nature of this suit by adding new, unrelated claims in his amended complaint. George v.
13 Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

14 If Plaintiff does not wish to file an amended complaint and is agreeable to proceeding
15 only on the cognizable due process claim against Defendant Randolph, Plaintiff may so notify
16 the Court in writing, and the Court will dismiss the other claims and Defendants, and will
17 forward Plaintiff one (1) summons and one (1) USM-285 form for completion and return. Upon
18 receipt of the forms, the Court will direct the United States Marshal to initiate service of process.

19 If Plaintiff opts to amend, his amended complaint should be brief. Fed. R. Civ. P. 8(a).
20 Plaintiff must identify how each individual defendant caused the deprivation of Plaintiff’s
21 constitutional or other federal rights: “The inquiry into causation must be individualized and
22 focus on the duties and responsibilities of each individual defendant whose acts or omissions are
23 alleged to have caused a constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th
24 Cir. 1988). With respect to exhibits, while they are permissible if incorporated by reference,
25 Fed. R. Civ. P. 10(c), they are not necessary in the federal system of notice pleading, Fed. R.
26 Civ. P. 8(a). In other words, it is not necessary at this stage to submit evidence to prove the
27 allegations in Plaintiff’s complaint because at this stage Plaintiff’s factual allegations will be
28 accepted as true.

1 Although Plaintiff’s factual allegations will be accepted as true and “the pleading
2 standard Rule 8 announces does not require ‘detailed factual allegations,’” “a complaint must
3 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
4 face.” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555). “A claim has facial
5 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
6 inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678 (citing
7 Twombly, 550 U.S. at 556).

8 Plaintiff is advised that an amended complaint supersedes the original complaint.
9 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
10 567 (9th Cir. 1987). The amended complaint must be “complete in itself without reference to the
11 prior or superseded pleading.” Local Rule 220. Plaintiff is warned that “[a]ll causes of action
12 alleged in an original complaint which are not alleged in an amended complaint are waived.”
13 King, 814 F.2d at 567 (citing London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981));
14 accord Forsyth, 114 F.3d at 1474. In other words, even the claims that were properly stated in
15 the original complaint must be completely stated again in the amended complaint. Finally,
16 Plaintiff is advised that, should he choose to amend, he may not bring unrelated claims in the
17 same action.

18 Based on the foregoing, it is HEREBY ORDERED that:

- 19 1. The Clerk’s Office shall send Plaintiff an amended civil rights complaint form;
- 20 2. Within thirty (30) days from the date of service of this order, Plaintiff must either:
 - 21 a. File an amended complaint curing the deficiencies identified by the Court
22 in this order, or
 - 23 b. Notify the Court in writing that he does not wish to file an amended
24 complaint and wishes to proceed only against Defendant Randolph for
25 damages for his due process claim; and

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3. If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court order.

IT IS SO ORDERED.

Dated: August 2, 2017


UNITED STATES MAGISTRATE JUDGE