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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTWOINE BEALER,
Plaintiff,

v.

WARDEN OF KERN VALLEY STATE
PRISON,
Defendant.

Case No. 1:17-cv-01277-LJO-SAB (PC)

ORDER STRIKING MAY 14, 2018 FIRST
AMENDED COMPLAINT AND
DIRECTING CLERK OF COURT TO FILE
IT IN NEW ACTION

(ECF No. 23)

Plaintiff Antwoine Bealer, a state prisoner, is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint in this action was screened on March 14, 2018, and he was ordered to file an amended complaint. (ECF No. 19.) On May 7, 2018, Plaintiff filed a motion for an extension of time and was granted sixty days in which to file his amended complaint. (ECF No. 23.) On May 14, 2018, a first amended complaint was filed in this action. (ECF No. 23.) On July 12, 2018, an amended complaint was lodged in the action. (ECF No. 24.)

Upon review of the amended complaint filed on May 14, 2018, the Court finds that it was not intended to be an amended complaint in this action. It does not contain allegations that relate to the original complaint or to the screening order. However, the July 12, 2018 amended complaint does address the same allegations as the original complaint and challenges the

1 findings in the March 14, 2018 order.

2 The Court has reviewed the cases that Plaintiff currently has pending in this court and
3 finds that the May 14, 2018 complaint is not related to nor does it appear to have been intended
4 to be filed in those actions. The court also notes that the complaint did not include a case
5 number. Therefore, the Court concludes that although it was titled amended complaint, the
6 complaint filed on March 14, 2018 should have been filed as a new action. The Court notes that
7 complaint in this action was filed as an amended complaint in Bealer v. Kern Valley State
8 Prison, no. 1:16-cv-00367-DAD-SKO (E.D. Cal.). (ECF Nos. 1, 2.) In that action, Plaintiff filed
9 a notice that he had inadvertently used an amended complaint form and had intended to file a
10 new action.

11 Plaintiff is advised that to avoid such confusion in the future when filing a complaint in a
12 new action, he should not use an amended complaint form and must file an application to
13 proceed in forma pauperis with the new complaint.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The first amended complaint filed on May 14, 2018 (ECF No. 23) is STRICKEN
16 from the record in this case and the Clerk of the Court is DIRECTED to open it as
17 a new action; and
- 18 2. The Clerk of the Court is DIRECTED to file the first amended complaint lodged
19 on July 12, 2018 (ECF No. 24) in this action.

20 IT IS SO ORDERED.

21 Dated: August 28, 2018

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24 UNITED STATES MAGISTRATE JUDGE
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