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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEREMY DELPHIN,
Plaintiff,
v.
J. MORLEY, et al.,
Defendants.

Case No. 1:19-cv-01076-NONE-SKO (PC)

ORDER FOR CLARIFICATION
21-DAY DEADLINE

On January 27, 2021, the undersigned issued findings and recommendations to grant Defendants’ motion to partially dismiss the complaint. (Doc. 34.) On March 26, 2021, District Judge Dale A. Drozd adopted the findings and recommendations, dismissing, with leave to amend, Plaintiff’s claims of excessive force and failure to intercede against Defendants Hammonds and Whitson. (Doc. 37.)

On March 26, 2021, the Court directed Plaintiff to file a first amended complaint curing the deficiencies in his pleading or a notice that he wishes to proceed only on the claims previously found cognizable, i.e., claims of excessive force and/or failure to intercede against Defendants Banelos, Morley, and Villalobos and claims of deliberate indifference to serious medical needs against Defendants Brown and Stewart. (Doc. 38.)

On April 19, 2021, Plaintiff filed a first amended complaint. (Doc. 41.) However, on April 26, 2021, Plaintiff filed a notice that he “wish[es] to not file a first amended complaint and

1 instead wish[es] to . . . proceed” on the claims previously found cognizable, identified above.
2 (Doc. 42.) Thus, Plaintiff has filed conflicting documents.

3 Accordingly, the Court DIRECTS Plaintiff to file a notice indicating (1) whether he
4 wishes to proceed on his first amended complaint or (2) whether he instead wishes to withdraw
5 his first amended complaint and proceed only on the claims of excessive force and/or failure to
6 intercede against Defendants Banuelos, Morley, and Villalobos, and the claims of deliberate
7 indifference to serious medical needs against Defendants Brown and Stewart, in his original
8 complaint. Plaintiff shall have 21 days from the date of service of this order to file the notice.

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10 IT IS SO ORDERED.

11 Dated: April 27, 2021

/s/ Sheila K. Overt
UNITED STATES MAGISTRATE JUDGE

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