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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN IVAN KOCAK,
Plaintiff,
v.
CDCR, et al.,
Defendants.

No. 1:21-cv-01669 GSA (PC)
ORDER DIRECTING PLAINTIFF TO
REFILE NOTICE ON HOW TO PROCEED
PLAINTIFF’S NOTICE ON HOW TO
PROCEED DUE **SEPTEMBER 10, 2024**
PLAINTIFF’S AMENDED COMPLAINT, IF
ANY, DUE **SEPTEMBER 26, 2024**

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 18, 2024, the complaint was screened and Plaintiff was given the opportunity either to amend the complaint or to proceed on the complaint as screened. ECF No. 13 at 14-15 (screening order). Shortly thereafter, Plaintiff filed his notice on how to proceed. See ECF No. 13.

A comparison of the screening order and the notice on how to proceed form sent to Plaintiff indicates that they contradict one another. Specifically, the viable claims identified in the screening order are not the same as the viable claims identified in the notice on how to proceed form. Compare ECF No. 12 at 5-12 (complaint analysis), with ECF No. 12 at 16 (notice

1 on how to proceed form).

2 Because of this conflict, it is uncertain on which claims Plaintiff would like to proceed.
3 Therefore, Plaintiff will be sent another copy of the screened complaint and he will be directed to
4 complete and return a second, corrected notice on how to proceed form.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The Clerk of Court shall send Plaintiff a copy of the screened complaint without the
7 deficient notice on how to proceed form that is attached to it. See ECF No. 12 at 16
8 (deficient notice on how to proceed form);
- 9 2. Within fourteen days from the date of this order – **by September 10, 2024**, – Plaintiff
10 must complete and return the corrected notice on how to proceed form that is attached
11 to the end of this order, and
- 12 3. On the notice form, should Plaintiff choose to amend the complaint, he will be given
13 thirty days from the date of this order, **i.e., until September 26, 2024**, to file a first
14 amended complaint.

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17 IT IS SO ORDERED.

18 Dated: August 27, 2024

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN IVAN KOCAK,
Plaintiff,
v.
CDCR, et al.,
Defendants.

No. 1:21-cv-01669 GSA (PC)

PLAINTIFF’S NOTICE ON HOW TO
PROCEED (CORRECTED)

CHECK ONE:

_____ Plaintiff would like to proceed immediately on: (1) his Eighth Amendment failure to protect claim against Defendant Jaime; (2) his Eighth Amendment right to protection from inhumane conditions of confinement against Defendant Jaime, and (3) his state law negligence claim against Defendant Jaime, but only if he presents evidence that he has complied with California Government Claims Act. Plaintiff understands that by choosing to go forward without amending the complaint, he is voluntarily dismissing all other claims and all other Defendants pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i).

_____ Plaintiff would like to amend the complaint.

DATED: _____

JOHN IVAN KOCAK
Plaintiff Pro Se