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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKY LAMONT BROWN,

Plaintiff,

No. CIV S-07-1949 FCD GGH P

vs.

D.K. SISTO, et al.,

Defendant.

ORDER

_____ /

On December 10, 2008, the court found that the October 16, 2008, first amended complaint stated a colorable claim for relief. The court ordered defendants Sisto, Traquina, Rallos and Hicks to file a response within twenty days. The court ordered plaintiff to complete and return the forms necessary to effect service of defendant Morales within thirty days.

On December 29, 2008, plaintiff filed a motion for leave to file a second amended complaint and a proposed second amended complaint. Plaintiff states that he forgot to include several exhibits with the first amended complaint. The court has reviewed the first amended and proposed second amended complaint and finds them to be substantively identical. Good cause appearing, the motion to amend is granted.

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1 On December 30, 2008, defendants Sisto, Traquina, Rallos and Hicks filed an
2 answer to the first amended complaint. For the reasons discussed above, the court will deem
3 defendants' answer as addressing the second amended complaint. The court will now order
4 service of the second amended complaint on defendant Morales.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. Plaintiff's December 29, 2008, motion to amend (no. 28) is granted; this action
7 shall now proceed on the second amended complaint attached to the December 29, 2008, motion
8 to amend;

9 2. The answer filed December 30, 2008, by defendants Sisto, Traquina, Fallos
10 and Hicks is deemed to address the second amended complaint;

11 3. The December 10, 2008, order directing service of the first amended complaint
12 on defendant Morales is vacated;

13 4. Service is appropriate for the following defendants: Morales.

14 5. The Clerk of the Court shall send plaintiff 1 USM-285 forms, one summons,
15 an instruction sheet and a copy of the second amended complaint filed December 29, 2008;

16 6. Within thirty days from the date of this order, plaintiff shall complete the
17 attached Notice of Submission of Documents and submit the following documents to the court:

18 a. The completed Notice of Submission of Documents;

19 b. One completed summons;

20 c. One completed USM-285 form for each defendant listed in number 3
21 above; and

22 d. Two copies of the endorsed second amended complaint filed December
23 29, 2008.

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7. Plaintiff need not attempt service on defendants and need not request waiver of service. Upon receipt of the above-described documents, the court will direct the United States Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

DATED: January 15, 2009

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICKY LAMONT BROWN,

Plaintiff,

No. CIV S-07-1949 FCD GGH P

vs.

D.K. SISTO, et al.,

NOTICE OF SUBMISSION

Defendants.

OF DOCUMENTS

_____ /

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____:

_____ completed summons form

_____ completed USM-285 forms

_____ copies of the _____
Complaint/Amended Complaint

DATED:

Plaintiff