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

LUIS VALENZUELA RODRIGUEZ,	)	
Plaintiff,	)	CASE NO.    CIV S-08-1028 BJR
	)	
v.	)	
	)	ORDER DENYING MOTION FOR
	)	RECONSIDERATION
JAMES TILTON, et al.	)	
Defendants.	)	

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This matter is before the court on Plaintiff Luiz Valenzuela Rodriguez’s *Ex Parte* Motion for Reconsideration and/or Correction of Court’s Order of Dismissal of Several Defendants filed on November 4, 2010. (Dkt. No. 35.) Plaintiff requests that the court reconsider its September 29, 2010 Order dismissing several defendants and ordering service on the remaining defendants.<sup>1</sup> (Dkt. No. 34.) Mr. Rodriguez contends that the court mistakenly caused several defendants to be

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<sup>1</sup> The court screened the proposed third amended complaint, filed on April 26, 2010, pursuant to 28 U.S.C. § 1915A. Prior to this, the court had screened an amended complaint and ordered service on defendants three times, on May 28, 2008, October 6, 2009 and February 23, 2010. (Dkt. Nos. 3, 11 and 20.) The court notified Plaintiff in the September 29, 2010 Order that: (1) it would not entertain any further motions to amend the complaint unless in response to the defendants’ pleadings; (2) Plaintiff should provide the Clerk of Court the forms necessary to effect service on the defendants; and (3) if the Plaintiff failed to comply with the court’s instructions, the case would be dismissed. (Dkt. No. 34.)

1 dismissed and may have inadvertently screened the wrong amended complaint. (Dkt. No. 35 at  
2 1-2.)

3 The present motion is meritless. Plaintiff failed to show either manifest error or raise new  
4 facts or legal authority that could not, with reasonable diligence, have been brought to the court's  
5 attention earlier. However, the court does find that it inadvertently failed to include Defendants  
6 Campbell, Garcia, and Micholetti among those defendants that were dismissed from this action.  
7 Plaintiff failed to allege specific individual conduct by Warden Campbell that affirmatively  
8 linked him to Plaintiff's alleged injuries. *See Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1948 (2009)  
9 (noting that supervisory personnel are generally not liable under section 1983 for the actions of  
10 their employees, plaintiff must plead that the official, through his or her own individual actions,  
11 violated the constitution). Similarly, Plaintiff failed to allege facts sufficient to state an Eighth  
12 Amendment claim upon which relief may be granted as to Defendant Micholetti. Plaintiff alleges  
13 that Defendant Micholetti confiscated his personal effects (television, clothes, food and other  
14 such items) and also "wished [Plaintiff] would've died." (Dkt. No. 32 at 37-38.) Such  
15 allegations, without more, are not sufficient to state a claim for deliberate indifference to a  
16 serious medical need. Finally, Plaintiff raises no allegations whatsoever against Defendant  
17 Garcia. Accordingly, the September 29, 2010 Order shall be modified to reflect that Defendants  
18 Campbell, Micholetti and Garcia are dismissed from the action.  
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21 Plaintiff further alleges that the Clerk of the Court mistakenly sent him a copy of the  
22 February 8, 2010 proposed amended complaint along with a copy of the September 29, 2010  
23 Order.<sup>2</sup> The Clerk of Court is instructed to send Plaintiff a file-stamped copy of the July 5, 2010  
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<sup>2</sup> Plaintiff is concerned that the court may have inadvertently screened this copy of the proposed amended complaint instead of the July 5, 2010 amended complaint. Such error did not occur.

1 amended complaint, which is now the operative complaint in this matter. The remainder of the  
2 present motion is denied.

3 Based on the foregoing:

4 1. Defendants Campbell, Micholetti and Garcia are DISMISSED from this action;

5 2. The Clerk of the Court shall send Plaintiff a file-stamped copy of the July 5, 2010  
6 Amended Complaint; and

7 3. Plaintiff's motion to correct the dismissal of defendants is DENIED.

8 **PLAINTIFF HAS THIRTY DAYS FROM THE DATE OF THIS ORDER TO SUBMIT**  
9 **THE FORMS AS INSTRUCTED IN THE SEPTEMBER 29, 2010 ORDER OR THIS**  
10 **ACTION WILL BE DISMISSED.**

11 DATED this 19th day of November, 2010.

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15 /s/ Barbara Jacobs Rothstein

16 Barbara Jacobs Rothstein  
17 U.S. District Court Judge  
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