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

ROBERT HAYNES,

CIV S-08-2177-SPG (PC)

Plaintiff,

ORDER DISMISSING AMENDED COMPLAINT

vs.

D.K. SISTO et al.,

Defendants.

_____ /

On January 25, 2010, Defendants filed a motion to dismiss this action under Rule 8 of the Federal Rules of Civil Procedure and Local Rule 220 of the Eastern District of California on the ground that Plaintiff has not filed a separate and independent complaint that sufficiently alleges a claim against any Defendant. (Doc. 38.) On February 19, 2010, Plaintiff filed an opposition to Defendants' motion. (Doc. 40.) Defendants have not filed a reply to Plaintiff's opposition.

Plaintiff concedes that his amended complaint is deficient. (Doc. 40, at 1.) He requests that the court dismiss his complaint without prejudice. Dismissal without leave to amend is improper unless it is clear that the complaint could not be saved by amendment. Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th Cir. 2009). Here, it is clear that Plaintiff could file a separate and independent complaint that sufficiently alleges claims without reference to any prior pleading.

Accordingly, this court GRANTS, without prejudice, Defendants' motion to dismiss Plaintiff's

1 amended complaint and orders that the complaint be dismissed with 60 days leave to amend.

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3 IT IS SO ORDERED.

4 Dated: March 3, 2010 /s/ Susan P. Graber

5 _____ UNITED STATES CIRCUIT JUDGE

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