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

VINCENT J. SOLOMON,

Plaintiff,

No. 2:08-cv-2544 WBS JFM (PC)

vs.

LIEUTENANT SCHIRMER, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On August 6, 2010, the court directed the United States Marshal to serve process on twenty-eight defendants named in claims raised in plaintiff’s first amended complaint. On December 17, 2010, twenty-seven defendants filed a motion to dismiss.¹ In an order filed August 15, 2011, this court found that plaintiff had set forth additional factual allegations in his opposition that might, if included in a second amended complaint, cure some or all of the alleged deficiencies in the first amended complaint. For that reason, plaintiff’s first amended complaint was dismissed with leave to amend, and defendants’ motion to dismiss was denied without

¹ Service as to the twenty-eighth defendant was returned unexecuted, and by order filed January 21, 2011, the United States Marshal was again ordered to serve process on that defendant.

1 prejudice. After receiving an extension of time to do so, on October 11, 2011, plaintiff filed a
2 proposed second amended complaint.

3 Plaintiff has added twenty-two new defendants in the proposed second amended
4 complaint. In addition, although it is not entirely clear, it appears that plaintiff may be
5 attempting to add new claims to this action. Plaintiff was granted permission to amend his
6 complaint only so that he could add factual allegations against already served defendants to the
7 claims raised in the first amended complaint. Plaintiff has not sought leave to add new claims or
8 to join new defendants, nor will the court grant him leave to do so in this action, which has
9 already been pending for three years.

10 Good cause appearing, plaintiff's second amended complaint will be dismissed.
11 Plaintiff will be granted a period of thirty days in which to file a third amended complaint.
12 Should plaintiff choose to file a third amended complaint, he shall name as defendants only
13 individuals who have been served with process in this action, and he shall raise against those
14 individuals only the claims raised in the first amended complaint. The sole purpose of the
15 amendment is to add, as appropriate, additional factual allegations included in his opposition to
16 defendants' motion to dismiss to support the claims already raised in the first amended
17 complaint. For that reason, the Clerk of the Court will be directed to send plaintiff a copy of his
18 first amended complaint and a copy of his opposition to defendants' motion to dismiss. If
19 plaintiff fails to comply with this order in any way, including but not limited to naming
20 additional defendants or raising claims not already raised in the first amended complaint, this
21 court will recommend dismissal of this action as a sanction for non-compliance with orders of
22 this court. See Local Rule 11-110; Fed. R. Civ. P. 41(b).

23 In accordance with the above, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff's second amended complaint is dismissed; and
- 25 2. Within thirty days from the date of this order, plaintiff shall complete the
26 attached Notice of Amendment and submit the following documents to the court:

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- a. The completed Notice of Amendment; and
- b. An original and one copy of the Third Amended Complaint.

Plaintiff's third amended complaint shall comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, the Local Rules of Practice, and this order; the third amended complaint must bear the docket number assigned this case and must be labeled "Third Amended Complaint"; failure to file a third amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

3. The Clerk of the Court is directed to send plaintiff a copy of his first amended complaint, filed December 14, 2009 (Docket No. 19), a copy of his opposition to defendants' motion to dismiss, filed February 24, 2011 (Docket No. 63), and a copy of the court's form civil rights complaint for use in preparation of any proposed third amended complaint.

DATED: December 22, 2011.


UNITED STATES MAGISTRATE JUDGE

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

VINCENT J. SOLOMON,

Plaintiff,

No. 2:08-cv-2544 WBS JFM (PC)

vs.

WARDEN T. FELKER, et al.,

NOTICE OF AMENDMENT

Defendants.

_____ /

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

_____ Third Amended Complaint

DATED:

Plaintiff