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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 JFM P

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. This action is proceeding before a United States Magistrate Judge with the consent of the parties pursuant to 28 U.S.C. § 636(c). See Order filed February 8, 2012.

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

_____ 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 deficiencies in the first amended complaint. For that reason, plaintiff's first amended complaint
2 was dismissed with leave to amend, and defendants' motion to dismiss was denied without
3 prejudice. After receiving an extension of time to do so, on October 11, 2011, plaintiff filed a
4 proposed second amended complaint.

5 By order filed December 23, 2011, this court found that plaintiff had added
6 twenty-two new defendants in the proposed second amended complaint and might be attempting
7 to add new claims to this action. The court dismissed the second amended complaint on the
8 grounds that plaintiff had been granted permission to amend his complaint only to add factual
9 allegations against already served defendants to the claims raised in the first amended complaint,
10 and granted plaintiff a a period of thirty days in which to file a third amended complaint. The
11 order specifically provided that the sole purpose of amendment was to add, as appropriate,
12 additional factual allegations included in plaintiff's opposition to defendants' motion to dismiss
13 the first amended complaint.

14 On January 9, 2012, plaintiff filed a proposed third amended complaint. On April
15 19, 2012, plaintiff was ordered to show cause in writing why this action should not be dismissed.
16 The basis for the order to show cause was that plaintiff had added numerous claims to the
17 proposed third amended complaint, in violation of the December 23, 2011 order.

18 On May 29, 2012, after receiving an extension of time, plaintiff filed a response to
19 the order to show cause, to which is appended a proposed fourth amended complaint. The
20 proposed fourth amended complaint appears to be in compliance with the December 23, 2011
21 order and to state one or more cognizable claims for relief against the defendants in this action.
22 See 28 U.S.C. § 1915A. Accordingly, good cause appearing, the Clerk of the Court will be
23 directed to file the proposed fourth amended complaint as a separate document and defendants
24 will be directed to respond to the fourth amended complaint.

25 As noted in the court's December 23, 2011 order, by order filed January 21, 2011,
26 the United States Marshal was again order to serve process on defendant Hutchinson. Good

1 cause appearing, counsel for defendants will be directed to inform the court in writing whether
2 counsel will accept service of the fourth amended complaint on behalf of defendant Hutchingson.

3 Finally, on June 20, 2012, plaintiff filed a motion for a court order requiring
4 prison officials at California State Prison-Corcoran (CSP-Corcoran) to issue plaintiff's legal
5 property to him. Good cause appearing, plaintiff's motion will be denied without prejudice to its
6 renewal on a showing that after exhausting all administrative remedies plaintiff is still without
7 access to his legal property.

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

9 1. The order to show cause filed April 19, 2012 is discharged;

10 2. The Clerk of the Court is directed to file and docket plaintiff's fourth amended
11 complaint, appended to plaintiff's May 29, 2012 response to the order to show cause, as a
12 separate document in this action;

13 3. Within thirty days from the date of this order defendants shall file and serve a
14 response to the fourth amended complaint;

15 4. Within twenty days from the date of this order counsel for defendants shall
16 inform the court in writing whether counsel will accept service of the fourth amended complaint
17 on behalf of defendant Hutchingson; and

18 5. Plaintiff's June 20, 2012 motion is denied without prejudice.

19 DATED: September 27, 2012.

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21 
22 UNITED STATES MAGISTRATE JUDGE

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