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

JEFF AIDNIK,

Plaintiff,

No. CIV S-07-1273 MCE EFB P

vs.

O'CONNER, et al.,

Defendants.

ORDER

Plaintiff is a prisoner proceeding in pro se in this action asserting civil rights claims under 42 U.S.C. § 1983. Plaintiff filed two complaints on the same date, August 31, 2007, intending to pursue separate lawsuits against separate defendants. Plaintiff has brought to the court's attention that, through clerical error, both complaints were assigned the same case number. As noted below, a separate case number needs to be assigned for the second action.

On August 31, 2007, plaintiff commenced an action against defendants California Medical Facility, Hubbard, Grouch, Moreno, Swarget, Barkley, Riley, Casillas, Lewis, Smith, and Perez. Docket No. 5.¹ That action was designated as case number 2:07-cv-1273 MCE EFB.

¹ On January 10, 2008, plaintiff filed a first amended complaint against these defendants and on August 25, 2008, plaintiff filed a second amended complaint against these defendants. Docket Nos. 19 and 33. On the same day, plaintiff filed a request pertaining to his action against these defendants. Docket No. 34.

1 On that same date plaintiff also commenced an action against defendants Russel, O’Conner and
2 Veal. Docket No. 13. Due to clerical error, this action was also designated as case number 2:07-
3 cv-1273 MCE EFB.²

4 On September 9, 2008, plaintiff wrote to the court explaining that he intended to file two
5 separate actions – one against O’Conner and Russel, and another against California Medical
6 Facility, Hubbard, Grouch, etc.

7 Accordingly, to correct the clerical error a new action must be opened and a case number
8 assigned for the case that proceeds against defendants California Medical Facility, Hubbard,
9 Grouch, Moreno, Swarget, Barkley, Riley, Casillas, Lewis, Smith, and Perez. This action, case
10 number 2:07-cv-1273 MCE EFB, will proceed against defendants O’Conner, Veal and Russel.

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. The Clerk of the Court is directed to open a new action and file the August 31, 2007
13 complaint (docket no. 5), the January 10, 2008 first amended complaint (docket no. 19), the
14 August 25, 2008 second amended complaint (docket no. 33), the August 25, 2008 request
15 (docket no. 34), the September 9, 2008 letter (docket no. 36) and a copy of this order in that
16 action. That case should be given a new case number and assigned to the same District Judge
17 and Magistrate Judge.

18 2. In the new action, plaintiff proceeds *in forma pauperis*.

19 3. Plaintiff is informed that his August 25, 2008 second amended complaint against
20 defendants California Medical Facility, Hubbard, Grouch, Moreno, Swarget, Barkley, Riley,
21 Casillas, Lewis, Smith, and Perez, once filed in a new action, will be screened in due course.

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25 ² On April 17, 2008, plaintiff filed an amended complaint against defendants Russel,
26 O’Conner and Veal. Docket No. 29. On September 5, 2008 plaintiff complied with this court’s
August 11, 2008 order, which determined that plaintiff’s amended complaint states a cognizable
claim for relief against defendants O’Conner and Russel only.

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4. Plaintiff is further informed that this action proceeds on the April 17, 2008 amended complaint against defendants O’Conner, Veal and Russel only.

DATED: October 29, 2008.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE