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

TONY ASBERRY,

Plaintiff,

No. 2:09-cv-01494 MCE KJN P

vs.

MATHEW CATE, et al.,

Defendants.

ORDER

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On December 28, 2010, this court directed plaintiff, within thirty days, to submit the documents necessary to effect service of process of his original complaint on defendants Hernandez and Phelps (and thus agreed to dismissal of the other defendants named therein), OR to file an amended complaint. (Dkt. No. 7.) Upon plaintiff's request, the court extended this deadline by thirty days. (Dkt. No. 12.) Plaintiff has now submitted the documents necessary to serve process on defendants Hernandez and Phelps, and agreed to dismissal of the other named defendants; however, plaintiff also states that he intends to file an amended complaint. (Dkt. No. 14.) Plaintiff must choose whether he wishes to pursue this action on the original complaint and proceed with service of process, OR whether he wishes to file an amended complaint.

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1                   Accordingly, plaintiff shall, on or before March 4, 2011, file a statement  
2 indicating whether he elects to: (1) proceed on the original complaint, and thus agrees to serve  
3 process only on defendants Hernandez and Phelps, thereby dismissing the other defendants; OR  
4 (2) proceed on an amended complaint *which plaintiff shall contemporaneously file*.<sup>1</sup> Plaintiff's  
5 "Motion" filed February 1, 2011, is denied as moot.

6                   SO ORDERED.

7 DATED: February 8, 2011

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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26                   <sup>1</sup> If plaintiff files an amended complaint, the original complaint will no longer be  
operative. Plaintiff may, however, request that the documents attached to the original complaint  
be attached by the court to plaintiff's amended complaint. An amended complaint will be subject  
to the court's screening pursuant to 28 U.S.C. § 1915A.