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

MARCUS LARRY CLEWIS,

Plaintiff,

No. CIV S-09-2120 JAM GGH P

vs.

CALIFORNIA PRISON HEALTH
CARE SERVICES, et al.,

ORDER

Defendants.

_____ /

Plaintiff, a state prisoner, is proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has filed a proposed second amended complaint. See docket # 34, filed on July 12, 2011. Plaintiff asserts that there has been no answer to the first amended complaint and no discovery to date. See docket # 32, filed on July 12, 2011. However, defendant Asp filed an answer to the first amended complaint on December 16, 2010 (docket # 24), and a Discovery and Scheduling Order was filed on December 27, 2010. In light of the posture of this case, plaintiff may only amend his first amended complaint pursuant to Fed. R. Civ. P. 15(a)(2), which permits a party to amend a pleading only with the written consent of the opposing party or with leave of the court. Leave to amend should be given freely “when justice so requires” (see id.). The court will consider defendant’s response to a proposed second

1 amended complaint before ruling on plaintiff's motion for leave to amend.

2 Accordingly, IT IS ORDERED that:

3 1. Plaintiff's "notice," filed on July 12, 2011 (docket # 32), is construed as a
4 motion for leave to file a second amended complaint, and the Clerk of the Court is directed to
5 note this modification in the text of the docket entry; and

6 2. Defendant is directed to file any response to the motion (docket # 32), within
7 twenty-eight days of the filed date of this order, after which plaintiff will have fourteen days to
8 file any reply.

9 DATED: August 8, 2011

10 /s/ Gregory G. Hollows
11 UNITED STATES MAGISTRATE JUDGE

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