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

MALIK JONES,

Plaintiff,

No. 2:09-cv-2133 FCD KJN P

vs.

C. PLESSAS, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding without counsel with a civil rights action pursuant to 42 U.S.C. § 1983. On February 11, 2011, a non-party deputy attorney general filed a request for clarification regarding the court’s screening orders and service of process on defendants. It appears there was some confusion as to the October 22, 2010 order and findings and recommendations as read in connection with the December 10, 2010 order. This court has authority to order service of process on cognizable claims. However, the recommended dismissal of claims must be resolved by the district court. Accordingly, the parties must read both the October 22, 2010 and December 10, 2010 orders together. Plaintiff’s third amended complaint, appended to his objections to the recommendations, simply added charging allegations that were not included in the second amended complaint. The district court addressed those new allegations in its December 10, 2010 order.

1 As noted in the October 22, 2010 order,

2 plaintiff states a potentially cognizable claim for excessive force  
3 and failure to protect under the Eighth Amendment based on the  
4 alleged events of June 25, 2008. Accordingly, the court will order  
5 service of process on defendants A. Pickens, Martines, Lorad,  
6 Plessas, Smith, Kinssinger and Fletcher.

7 (Dkt. No. 22 at 6.)

8 Additionally, in the October 22, 2010 order the court found that plaintiff states a  
9 potentially cognizable claim regarding plaintiff's allegations that on October 8, 2008, defendant  
10 Jackson used excessive force. (Id.) Defendant Jackson is also required to respond to plaintiff's  
11 state law claims of assault and battery and the intentional infliction of emotional distress. (Id.)  
12 In light of this October 22, 2010 order, the court intended to order service of process on, among  
13 others, defendants Plessas and Jackson. (Dkt. No. 22 at 7:1-5.)

14 In his third amended complaint, plaintiff added charging allegations regarding  
15 retaliation. On December 10, 2010, the district court specifically found that "the third amended  
16 complaint states a cognizable retaliation claim as to defendants Cosby, Wright, Boras, and  
17 Cross." (Dkt. No. 26 at 2.) Plaintiff also included new charging allegations as to alleged  
18 deliberate indifference to his serious medical needs. The district court found that plaintiff stated  
19 a cognizable deliberate indifference to serious medical needs claim as to defendants A. Pickens,  
20 Martines, Loard, Smith and Kinssinger. (Dkt. No. 26 at 2.)

21 Therefore, the January 4, 2011 order directing the U.S. Marshal to serve the third  
22 amended complaint on defendants A. Pickens, Martines, Lorad, Plessas, Smith, Kinssinger,  
23 Fletcher, Jackson, Boras, Cross, Cosby, and Wright conforms with the two screening orders.

24 IT IS HEREBY ORDERED that the February 11, 2011 request for clarification  
25 (dkt. no. 31) is granted.

26 DATED: March 4, 2011

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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