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

GARY FRANCIS O’LEARY,

Plaintiff,

No. CIV S-09-2601 CKD P

vs.

CLARK,

Defendant.

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action under 42 U.S.C. § 1983. He has filed a motion to amend his second amended complaint, seeking to add several defendants that he was “unable to [add] due to a lock down.” Mot. at 1. Plaintiff previously named the same defendants in his second amended complaint. The court screened out all of those defendants under 28 U.S.C. § 1915A and found that the second amended complaint adequately stated a claim only against defendant Clark. See Order, Docket No. 25. The court gave plaintiff the option of attempting to state claims against the other defendants in a third amended complaint or simply resting on the second amended complaint and proceeding solely against defendant Clark. Id. Plaintiff chose the latter; therefore he is foreclosed from filing yet another amended complaint to add the defendants that this court has already screened out, particularly when his motion to amend shows no good cause to reverse plaintiff’s own decision to proceed without them in this case.

1 Plaintiff has also filed two motions for the court's assistance in locating defendant
2 Clark for service. The U.S. Marshal's office filed an unexecuted summons with a notation that it
3 was unable to locate Clark either at the correctional facility where she allegedly violated
4 plaintiff's civil rights or in the database of the California Department of Corrections and
5 Rehabilitation (CDCR). See Docket No. 30. The court notes that the unexecuted summons,
6 which plaintiff provided, names only "Ms. Clark, RN" for service, while his motions for the
7 court's assistance seek help in locating "Susan Clark, RN." It is possible that providing the
8 defendant's full name will assist the U.S. Marshal in locating her for service. Therefore the court
9 will allow plaintiff a second opportunity to submit the necessary service documents with the
10 defendant's full name.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The motion to amend (Docket No. 35) is denied.
- 13 2. The Clerk of the Court shall send plaintiff one USM-285 form, one summons,
14 an instruction sheet and a copy of the amended complaint filed.
- 15 3. Within thirty days from the date of this order, plaintiff shall complete the
16 attached Notice of Submission of Documents and submit the following documents to the court:
 - 17 a. The completed Notice of Submission of Documents;
 - 18 b. One completed summons;
 - 19 c. One completed USM-285 form for each defendant listed in number 1
20 above; and
 - 21 d. Two copies of the second amended complaint filed June 15, 2010.
- 22 4. Plaintiff need not attempt service on defendants and need not request waiver
23 of service. Upon receipt of the above-described documents, the court will direct the United
24 States Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure
25 4 without payment of costs.

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5. The motions for court assistance and to compel CDCR's assistance (Docket Nos. 36 and 38) are moot.

Dated: November 20, 2011


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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