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

LAWRENCE CYPRIAN,

Plaintiff,

No. 2:09-cv-2704-JAM-JFM (PC)

vs.

DERRICK GIVENS, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. By order filed October 14, 2009, the court found that plaintiff's complaint stated a cognizable claim for relief against defendants Derrick Givens, P. Rogers; and K. Providence and directed plaintiff to return the forms necessary for service of process on said defendants. On November 12, 2009, plaintiff submitted the required documents. On the same day, plaintiff filed a motion for leave to file an amended complaint. On December 4, 2009, plaintiff filed an amended complaint and, separately, a supplemental complaint. On the same day, plaintiff filed a motion for appointment of counsel.

Plaintiff is entitled to amend his complaint once as of right prior to service of a responsive pleading. See Fed. R. Civ. P. 15. Accordingly, plaintiff's motion to amend will be granted. However, good cause appearing, this action will not proceed on the two pleadings filed

1 by plaintiff on December 4, 2009. Instead, plaintiff will be required to file one second amended
2 complaint that names all defendants and raises all claims that plaintiff seeks to bring in this
3 action. See Local Rule 220 (E.D. Cal.) Thereafter, the court will screen the second amended
4 complaint pursuant to 28 U.S.C. § 1915A.

5 As noted above, plaintiff has also moved for the appointment of counsel. The
6 United States Supreme Court has ruled that district courts lack authority to require counsel to
7 represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296,
8 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance
9 of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
10 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the
11 court does not find the required exceptional circumstances. Plaintiff's motion for the
12 appointment of counsel will therefore be denied.

13 In accordance with the above, IT IS HEREBY ORDERED that:

14 1. Plaintiff's November 12, 2009 motion to amend is granted;
15 2. Plaintiff's amended and supplemental complaints, filed December 4, 2009, are
16 dismissed with leave to amend;

17 3. Within thirty days from the date of this order, plaintiff shall complete the
18 attached Notice of Amendment and submit the following documents to the court:

19 a. The completed Notice of Amendment; and

20 b. An original and one copy of the Second Amended Complaint.

21 Plaintiff's second amended complaint shall comply with the requirements of the Civil Rights
22 Act, the Federal Rules of Civil Procedure, the Local Rules of Practice and this order; the second
23 amended complaint must bear the docket number assigned this case and must be labeled "Second

24 ////

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1 Amended Complaint"; failure to file a second amended complaint in accordance with this order
2 may result in the dismissal of this action; and

3 4. Plaintiff's December 4, 2009 motion for appointment of counsel is denied.

4 DATED: December 22, 2009.

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7 UNITED STATES MAGISTRATE JUDGE

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

LAWRENCE CYPRIAN,

Plaintiff,

No. 2:09-cv-2704-JAM-JFM (PC)

vs.

DERRICK GIVENS, et al.,

NOTICE OF AMENDMENT

Defendants.

_____ /

Plaintiff hereby submits the following document in compliance with the court's
order filed _____:

_____ Second Amended Complaint

DATED:

Plaintiff