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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JAVIAD AKHTAR,

12 Plaintiff,

No. CIV S-09-2733 MCE AC P

13 vs.

14 J. MESA, et al.,

15 Defendants.

ORDER

16 _____/
17 Plaintiff is a California prisoner proceeding with counsel under the civil rights
18 statute, 42 U.S.C. § 1983. The mandate of the Ninth Circuit has issued, ordering that the
19 appellate court's judgment, entered on November 5, 2012, take effect as of November 28, 2012 .
20 See Doc. No. 40. The district court's judgment granting the motion to dismiss, brought by
21 defendants Mesa and Turner, has been vacated and the case remanded. See Akhtar v. Mesa, 698
22 F.3d 1202 (9th Cir. 2012); see also, Doc. Nos. 43 & 46. The Ninth Circuit's decision included,
23 inter alia, the following footnote: "Nothing in this opinion should be construed as limiting
24 Akhtar's ability to seek leave to amend his first amended complaint if he so chooses to do so
25 upon remand." Akhtar, 698 F. 3d 1202, n. 7.

26 Accordingly, IT IS ORDERED that:

1. Plaintiff may file a second amended complaint within thirty days of the date of service of this order;

2. If a second amended complaint is filed, defendants' response will be due within thirty days thereafter;

3. Absent the filing of a proposed second amended complaint, this matter will proceed upon plaintiff's first amended complaint, and defendants' answer will be due thirty days after the time for filing a second amended complaint has expired.

DATED: December 3, 2012.

/s/

ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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