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

SHERMAN JONES, et al.,

Plaintiffs,

No. 2:10-cv-2174 KJM KJN P

vs.

C. CANNEDY, et al.,

ORDER

Defendants.

_____ /

On July 13, 2011, this court ordered defendants to show cause for their failure to comply with this court’s order filed March 17, 2011, requiring that defendants file a reply to plaintiff’s opposition to defendants’ motion to dismiss, and a response to plaintiff’s requests for leave to file a First Amended Complaint; the court further ordered that defendants file such reply and response.

Defendants have now complied with all orders. For good cause shown, the order to show cause (Dkt. No. 28) is discharged.

Defendants have filed a statement of nonopposition to plaintiff’s requests for leave to file a First Amended Complaint. The requests (Dkt. Nos. 23, 27) are hereby granted. Plaintiff’s First Amended Complaint filed March 7, 2011 (Dkt. No. 22) shall be the operative complaint. However, given the ambiguities in plaintiff’s second request for leave to further

1 amend his complaint (Dkt. No. 27), plaintiff will be accorded thirty days within which to file a
2 Second Amended Complaint, or a statement that he intends to proceed on the First Amended
3 Complaint. If plaintiff fails to timely inform the court of his choice, this action shall proceed on
4 the currently operative First Amended Complaint.

5 Therefore, defendants' motion to dismiss filed December 21, 2010 (Dkt. No. 18)
6 is dismissed without prejudice. Defendants may renew their motion, including any pertinent
7 arguments set forth in their reply, after plaintiff decides whether he is proceeding on his First
8 Amended Complaint or an a Second Amended Complaint.

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. The order to show cause filed July 13, 2011 (Dkt. No. 28) is discharged;

11 2. Plaintiff's requests for leave to file a First Amended Complaint (Dkt. Nos. 23,
12 27) are granted;

13 3. The First Amended Complaint filed March 7, 2011 (Dkt. No. 22) is now the
14 operative complaint;

15 4. Plaintiff shall, within thirty days after the filing date of this order, file the
16 attached "Notice" indicating whether he intends to proceed on the First Amended Complaint, or
17 on a Second Amended Complaint.

18 5. Should plaintiff intend to proceed on a Second Amended Complaint, such
19 Second Amended Complaint must be attached to plaintiff's completed "Notice," and the Clerk of
20 Court is directed to separately file the "Notice" and Second Amended Complaint.

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1 6. Defendants' motion to dismiss filed December 21, 2010 (Dkt. No. 18) is
2 dismissed without prejudice.

3 SO ORDERED.

4 DATED: July 28, 2011

5 
6 KENDALL J. NEWMAN
7 UNITED STATES MAGISTRATE JUDGE

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

SHERMAN JONES, et al.,

Plaintiffs,

No. 2:10-cv-2174 KJM KJN P

vs.

C. CANNEDY, et al.,

NOTICE

Defendant.

_____ /

Plaintiff hereby:

_____ Proceeds on the First Amended Complaint (Dkt. No. 22)

OR

_____ Proceeds on a Second Amended Complaint, attached hereto.

Date

Plaintiff