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

MIKE ANGEL ESCALANTE,

Plaintiff,

No. CIV S-11-1508 JAM GGH P

vs.

E. UHREN, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. He seeks relief pursuant to 42 U.S.C. § 1983. This case was removed from state court and defendants filed a motion to dismiss which plaintiff did not oppose and instead filed an amended complaint on August 3, 2011. Defendants filed an answer and a motion to dismiss on August 17, 2011. However, on September 12, 2011, court issued a screening order dismissing the amended complaint with leave to amend and the motion to dismiss was vacated. The court noted that the amended complaint appeared to be barred by Heck v. Humphrey, 512 U.S. 477 (1994).

Yet on the same day the court issued the screening order, plaintiff filed a non-opposition to the motion to dismiss and a second amended complaint, though it is clear that plaintiff had not yet reviewed the court’s screening order. As the second amended complaint is substantially similar to the prior amended complaint that the court screened, and also appears to

1 be Heck barred, the second amended complaint is dismissed for the reasons set forth in the  
2 court's September 12, 2011, screening order (Doc. 19), but plaintiff will still be allowed one final  
3 opportunity to amend within twenty-eight days.

4 Accordingly, IT IS HEREBY ORDERED that plaintiff's September 12, 2011,  
5 second amended complaint (Doc. 21) is dismissed, and plaintiff is granted one final opportunity  
6 to file a third amended complaint. No further amendments will be allowed.

7 DATED: September 16, 2011

8 /s/ Gregory G. Hollows  
9 UNITED STATES MAGISTRATE JUDGE

10 GGH: AB  
11 esca1508.ord3