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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE LUIS SEGURA,  
Plaintiff,  
v.  
MICHAEL MCDONALD, et al.,  
Defendants.

No. 2:13-cv-0393 AC P

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 March 22, 2013, plaintiff’s complaint was dismissed with leave to amend within twenty-eight days. ECF No. 5. Plaintiff’s subsequent first amended complaint, ECF No. 11, was found appropriate for service upon two of the named defendants and service of the summons and complaint was ordered. See Orders, ECF No. 13, filed on June 21, 2013,<sup>1</sup> and ECF No. 15, filed July 25, 2013. However, plaintiff thereafter sought leave to file a second amended complaint, ECF No. 21, which motion was unopposed. ECF No. 22. Plaintiff was granted leave to file a second amended complaint within thirty days by order filed on January 15, 2014. ECF No. 25. Plaintiff’s first amended complaint was ultimately stricken as defective, pursuant to Fed. R. Civ. P. 11(a), for having not been signed properly. ECF

<sup>1</sup> Plaintiff had consented to the jurisdiction of the undersigned, ECF No. 9, and a third defendant was dismissed by the June 21st order.

1 No. 30. By that order, filed on March 20, 2014, plaintiff was granted an extension of time to file  
2 a second amended complaint not later than April 14, 2014. ECF No. 30. Plaintiff filed his  
3 second amended complaint timely on April 9, 2014. ECF No. 32. Defendants requested  
4 screening of the second amended complaint on April 10, 2014. ECF No. 33. In their request,  
5 defendants McDonald and Villanueva note that they were served with the first amended  
6 complaint but that plaintiff had requested leave to file a second amended complaint prior to the  
7 expiration of their time to respond to the first amended complaint. Id. Upon screening of the  
8 second amended complaint, defendants request thirty days to file a responsive pleading. Id.

9 The court, upon screening, finds that the second amended complaint states a cognizable  
10 claim for relief against defendants McDonald and Villanueva for a violation of the Eighth  
11 Amendment by a failure to protect plaintiff, pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §  
12 1915A(b). If the allegations of the second amended complaint are proven, plaintiff has a  
13 reasonable opportunity to prevail on the merits of this action.

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

- 15 1. Defendants' request for the second amended complaint to be screened, ECF No. 33, is  
16 granted, and  
17 2. Defendants McDonald and Villanueva, against whom plaintiff makes colorable claims  
18 of a failure to protect in the second amended complaint and who have been previously served,  
19 have thirty days to file a response to the second amended complaint.

20 DATED: September 24, 2014

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22 ALLISON CLAIRE  
23 UNITED STATES MAGISTRATE JUDGE  
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