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UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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BRYAN MAZZA,

No. 2:14-cv-0874 AC P

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Plaintiff,

13

v.

ORDER

14

L. AUSTIN, et al.,

15

Defendants.

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Plaintiff is a state prisoner incarcerated at California State Prison Solano (CSP-SOL),¹

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who proceeds pro se and in forma pauperis with this civil rights action filed pursuant to 42 U.S.C.

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§ 1983. By order filed September 2, 2014, this court found that plaintiff's original complaint

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states cognizable claims against defendants Austin, Kuersten, McCue and Tan, and directed

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plaintiff to submit documents for service of process on these defendants. ECF No. 15. However,

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plaintiff instead filed an amended complaint. ECF No. 27.

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By order filed May 5, 2015, this court dismissed plaintiff's amended complaint because it

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¹ Although this case has been pending for some time, the court has confirmed that plaintiff remains incarcerated at CSP-SOL. See <http://inmatelocator.cdcr.ca.gov/> (Inmate Locator website operated by the California Department of Corrections and Rehabilitation). See Fed. R. Evid. 201 (court may take judicial notice of facts that are capable of accurate determination by sources whose accuracy cannot reasonably be questioned); see also City of Sausalito v. O'Neill, 386 F.3d 1186, 1224 n.2 (9th Cir. 2004) (“We may take judicial notice of a record of a state agency not subject to reasonable dispute.”).

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1 was incomplete. The court granted plaintiff leave to proceed on his original complaint (ECF No.
2 3) (with the additional finding that the original complaint also states a claim against defendant
3 Lipson, upon whom service could be made), or to file a further amended complaint. See ECF No.
4 28.

5 Plaintiff submitted a Second Amended Complaint (SAC), see ECF No. 32, which is now
6 before the court for screening pursuant to 28 U.S.C. § 1915A. Review of the SAC demonstrates
7 that it is also incomplete – moreover, it is identical to plaintiff’s original complaint with the
8 exception that some pages are repeated, others are missing, and some exhibits are added.²

9 The court concludes that this action can proceed only on plaintiff’s original complaint,
10 with the addition of plaintiff’s new exhibits, against defendants Lipson, Austin, Kuersten, Tan,
11 and McCue,³ on plaintiff’s Eighth Amendment claims for deliberate indifference to his serious
12 medical needs. To accord plaintiff the best opportunity to present his claims, and to clarify the
13 docket, the Clerk of Court will be directed to designate plaintiff’s original complaint (at ECF No.
14 3) as the “Operative Complaint,” and to combine and separately file plaintiff’s new exhibits (at
15 ECF No. 32 at 10 (list denoted “Adendum (sic) to Exhibits”), *and* ECF No. 32 at 137-62
16 (Exhibits 23-7)) as an “Addendum to Operative Complaint.” Service of process of both
17 documents will be ordered on defendants, as presently set forth.

18 Although plaintiff continued to file amended complaints, he contemporaneously followed
19 the directions of this court to submit documents necessary to complete service of process of his
20 original complaint on four of the five defendants. See ECF Nos. 29, 31. It appears that plaintiff
21 has submitted service information for defendants Austin, Kuersten and Tan and Lipson, but not
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23 ² Pages 1-10 and 11-20 of the SAC are duplicative (see ECF No. 32 at 1-10, 11-20), and identical
24 to pages 1-10 of the original complaint (see ECF No. 3 at 1-10), with the exception that the SAC
25 identifies ten additional exhibits (Exhs. 23-32), see ECF No. 32 at 10, and includes five of them
26 (Exhs. 23-7, ECF No. 32 at 137-62). Both the original complaint and SAC contain several pages
27 of exhibits (cf. ECF No. 3 at 11-131, with ECF No. 32 at 21-162), set forth within the bodies of
the complaints (rather than at the ends). Both complaints end with the conclusion of plaintiff’s
typed pages, except the conclusion of the SAC is incomplete while the conclusion of the original
complaint is complete (see ECF No. 3 at 132-35; cf. ECF No. 32 at 163).

28 ³ This defendant appears to be referenced as both McCue and McGue; if he is retained in this
action, plaintiff shall clarify the correct spelling.

1 McCue. While plaintiff may have decided not to pursue his claims against defendant McCue (see
2 court's discussion at ECF No. 28 at 2:11-6), he will be accorded one additional opportunity to
3 submit service information for McCue while the United States Marshal proceeds to serve process
4 on the other defendants.

5 By separate order, this court will direct the United States Marshal to serve process of
6 plaintiff's "Operative Complaint" and "Addendum to Operative Complaint," on defendants
7 Austin, Kuersten, Tan and Lipson; should plaintiff later submit the information necessary to serve
8 process on defendant McCue, the court will then also order service of process on McCue.


9 Accordingly, IT IS HEREBY ORDERED that:

10 1. The Clerk of Court is directed to designate plaintiff's original complaint (at ECF No.
11 3) as the "Operative Complaint;" the Clerk of Court is also direct to combine and separately file
12 plaintiff's new exhibits (at ECF No. 32 at 10 (list denoted "Adendum (sic) to Exhibits"), *and* ECF
13 No. 32 at 137-62 (Exhibits 23-7)) as an "Addendum to Operative Complaint."

14 2. The Clerk of the Court is also directed to send plaintiff, together with a copy of this
15 order, a copy of the newly-filed "Addendum to Operative Complaint," and one blank USM-285
16 form for defendant McCue.⁴

17 3. Within twenty-one (21) days after the filing date of this order, plaintiff shall submit to
18 the court the completed USM-285 form for defendant McCue, together with the attached Notice
19 of Submission of Document. Failure to return this information will be construed as plaintiff's
20 request that defendant McCue be dismissed from this action, together with defendants Beard,
21 Kelso, Swarthout and Pfile (see generally ECF No. 15 (Order filed Sept. 2, 2014)).

22 DATED: September 21, 2015

23 
24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE

26 ⁴ The Clerk of Court has informed the undersigned that plaintiff already provided a summons and
27 sufficient copies of his original complaint to serve all five defendants. By separate order, and as a
28 courtesy to plaintiff, the court directs the Clerk of Court to make the requisite number of copies of
the "Addendum to Operative Complaint" for service of process by the United States Marshal in
tandem with plaintiff's original/operative complaint.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRYAN MAZZA,
Plaintiff,
v.
L. AUSTIN, et al.,
Defendants.

No. 2:14-cv-0874 AC P

NOTICE OF SUBMISSION OF DOCUMENT

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

_____ one completed USM-285 form for defendant McCue⁵

Date

Plaintiff

⁵ Plaintiff has already submitted the appropriate summons and sufficient copies of his original complaint.