

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

## JEFFREY EMERSON.

No. 2:14-cv-01569 TLN KJN P

Plaintiff,

V.

## ORDER

## NEW FOLSOM STATE PRISON,

Defendant.

Plaintiff is a state prisoner proceeding without counsel. He seeks relief pursuant to 42 U.S.C. § 1983.

On July 2, 2014, plaintiff filed his initial complaint. (ECF No. 1.) On August 14, 2014, the court filed an order dismissing the complaint (i) because the Eleventh Amendment barred suit against the sole defendant, New Folsom State Prison, and (ii) because among the remedies plaintiff sought was release from prison, a form of relief unavailable in a civil rights action brought under Section 1983. (ECF No. 17.) The court nonetheless granted plaintiff leave to file an amended complaint within 30 days. (Id.)

Plaintiff failed to file an amended complaint. As a result, on October 17, 2014, the court issued findings and recommendations recommending that the action be dismissed without prejudice. (ECF No. 22.) Plaintiff was given fourteen days to file objections thereto. (Id.) On October 30, 2014, plaintiff filed objections consisting of a single handwritten page, reading as

1 follows:

2 MAGISTRATE JUDGE KENDALL J. NEWMAN.  
3 ALL IS WELL.

4 OBVIOUSLY YOU DIDN'T READ MY 1983 OR YOU WOULDN'T OF SENT  
THIS I REALIZE YOU MADE A MISTAKE CORRECT IT. (ECF No. 24 at 1.)

5 Enclosed with this statement is a copy of the October 17, 2014 findings and recommendations.

6 (Id. at 4-5.)

7 Contrary to plaintiff's assertions, when the court issued the August 14, 2014 order, it had  
8 carefully reviewed the complaint and determined that plaintiff had therein failed to state a claim  
9 for relief. That order set forth the requirements for a properly-framed complaint. It was plaintiff's  
10 failure to timely file an amended complaint that triggered the October 17, 2014 findings and  
11 recommendations.

12 Plaintiff will be given another opportunity to file an amended complaint that meets the  
13 requirements for pleading under 42 U.S.C. § 1983. Accordingly, the court will vacate the  
14 October 17, 2014 findings and recommendations and give plaintiff an additional 30 days to file an  
15 amended complaint.

16 In accordance with the foregoing, IT IS HEREBY ORDERED that:

- 17 1. The October 17, 2014 findings and recommendations are vacated;
- 18 2. The Clerk of the Court is directed to serve plaintiff with a copy of the court's August  
14, 2014 order (ECF No. 17) for his review; and
- 19 3. Within thirty days from the date of this order, plaintiff shall complete the attached  
Notice of Amendment and submit the following documents to the court:
  - 22 a. The completed Notice of Amendment; and
  - 23 b. An original and one copy of the Amended Complaint.

24 Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the  
25 Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must  
26 also bear the docket number assigned to this case and must be labeled "Amended Complaint."

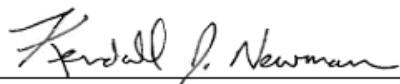
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1 Failure to file an amended complaint in accordance with this order may result in the dismissal of  
2 this action.

3 Dated: November 17, 2014

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY EMERSON,

No. 2:14-cv-1569 TLN KJN P

Plaintiff,

V.

## **NOTICE OF AMENDMENT**

## NEW FOLSOM STATE PRISON,

Defendant.

Plaintiff hereby submits the following document in compliance with the court's order filed \_\_\_\_\_.

## Amended Complaint

DATED:

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**Plaintiff**