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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 MIKEAL GLENN STINE,
12 Plaintiff,
13 v.
14 BUREAU OF PRISONS, et al.,
15 Defendants.
16

No. 2:18-cv-0684 KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

17 Plaintiff is a federal prisoner, proceeding pro se. Plaintiff filed a civil rights action under
18 Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971),
19 and is proceeding in forma pauperis. By order filed June 7, 2018, plaintiff's amended complaint
20 was dismissed with leave to file a second amended complaint. Plaintiff has now filed a second
21 amended complaint.

22 Plaintiff alleges his due process rights were violated when defendants wrongfully
23 validated him as a gang member because he "pissed off the regional director and director" by
24 filing lawsuits. (ECF No. 1 at 4.) He alleges that John Doe, an unknown individual with the
25 SIU/Sacramento office, wrongfully validated plaintiff as an Aryan Brotherhood gang member
26 without notice or a hearing in violation of plaintiff's due process rights, and defendants Mitchell
27 and Inch reviewed and approved the validation. Plaintiff's allegations state potentially cognizable

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1 due process claims as to defendants John Doe, Mitchell, and Inch based on their alleged
2 involvement in the validation process.

3 Of course, unknown persons cannot be served with process until they are identified by
4 their real names and the court will not investigate the names and identities of unnamed
5 defendants. Once plaintiff learn the identity of the “John Doe” he wishes to serve, he must
6 promptly move to substitute and name the correct defendant, or move pursuant to Rule 15 to file
7 an amended pleading to add the proper defendant. See Brass v. County of Los Angeles, 328 F.3d
8 1192, 1197-98 (9th Cir. 2003) (affirming dismissal of Doe defendants where Brass did not even
9 attempt to request leave to add new parties or amend the complaint).

10 Further, plaintiff alleges that defendant Revell agreed with the decision to validate
11 plaintiff, but alleges no facts connecting defendant Revell with the validation process, by
12 initiating, reviewing, or approving it. Liability under Bivens requires a showing of personal
13 involvement. See Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009) (in a Bivens action, “each
14 Government official, his or her title notwithstanding, is only liable for his or her own
15 misconduct”). Simply agreeing with a validation decision is insufficient to demonstrate a
16 constitutional violation. Plaintiff has had multiple opportunities to amend his pleading to state
17 sufficient factual allegations as to defendants, and in the last order, the court provided detailed
18 information as to the governing standards. Thus, the undersigned recommends that defendant
19 Revell be dismissed from this action without leave to amend, but without prejudice.

20 The second amended complaint states potentially cognizable due process claims for relief
21 against defendants Mitchell and Inch pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If
22 the allegations of the second amended complaint are proven, plaintiff has a reasonable possibility
23 of prevailing on the merits of this action.

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

- 25 1. Service is appropriate for the following defendants: Mitchell and Inch.
- 26 2. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons, an
27 instruction sheet and a copy of the second amended complaint filed June 18, 2018.

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1 3. Within thirty days from the date of this order, plaintiff shall complete the attached
2 Notice of Submission of Documents and submit the following documents to the court:

- 3 a. The completed Notice of Submission of Documents;
4 b. One completed summons;
5 c. One completed USM-285 form for each defendant listed in number 1 above;
6 and
7 d. Three copies of the endorsed amended complaint filed June 18, 2018.

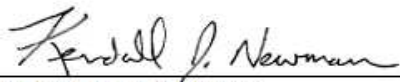
8 4. Plaintiff need not attempt service on defendants and need not request waiver of service.
9 Upon receipt of the above-described documents, the court will direct the United States Marshal to
10 serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4 without payment
11 of costs.

12 5. The Clerk of the Court is directed to assign a district judge to this case.

13 Further, IT IS RECOMMENDED that defendant Revell be dismissed from this action
14 without prejudice.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
20 objections shall be filed and served within fourteen days after service of the objections. The
21 parties are advised that failure to file objections within the specified time may waive the right to
22 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 Dated: June 21, 2018

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25 KENDALL J. NEWMAN
26 UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
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MIKEAL GLENN STINE,

Plaintiff,

v.

BUREAU OF PRISONS, et al.,

Defendants.

No. 2:18-cv-0684 KJN P

NOTICE OF SUBMISSION OF DOCUMENTS

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

- _____ completed summons form
- _____ completed USM-285 forms
- _____ copies of the _____
Amended Complaint

DATED:

Plaintiff