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

DONALD CANFIELD,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, et al.,

Defendants.

No. 2:18-CV-1092-KJM-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983.

On April 9, 2019, the court directed plaintiff to file a first amended complaint within 30 days. See ECF No. 12. As of June 18, 2019, plaintiff had not complied and the court issued findings and recommendations that this action be dismissed for lack of prosecution. See ECF No. 16. On June 19, 2019, plaintiff filed a first amended complaint. See ECF No. 17. Good cause appearing therefor, the June 18, 2019, findings and recommendations will be vacated.

On July 18, 2019, plaintiff filed a motion for leave to amend. See ECF No. 19. Plaintiff filed another document entitled “First Amended Complaint” on July 31, 2019. See ECF No. 20. It is unclear from plaintiff’s motion for leave to amend whether he seeks to proceed on the June 19, 2019, pleading or the July 31, 2019, pleading.

1 Procedurally, the June 19, 2019, pleading was filed in compliance with the court's
2 April 9, 2019, order dismissing plaintiff's original complaint with leave to amend. Plaintiff's July
3 31, 2019, pleading was filed as-of-right pursuant to Federal Rule of Civil Procedure 15(a)(1). As
4 such, plaintiff is not required to obtain leave of court to file the July 31, 2019, pleading.
5 Plaintiff's motion for leave to amend will, therefore, be denied as unnecessary. This action shall
6 proceed on the pleading filed on July 31, 2019, which the Clerk of the Court will be directed to
7 designate plaintiff's second amended complaint. The sufficiency of this pleading will be
8 addressed by separate order.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The findings and recommendations issued on June 18, 2019 (ECF No. 16),
11 are vacated;
- 12 2. Plaintiff's motion for leave to amend (ECF No. 19) is denied as
13 unnecessary; and
- 14 3. This action shall proceed on plaintiff's pleading filed on July 31, 2019,
15 which the Clerk of the Court is directed to designate plaintiff's second amended complaint.

16
17 Dated: September 6, 2019



18 DENNIS M. COTA
19 UNITED STATES MAGISTRATE JUDGE