UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

DARYL ANTHONY HICKS,

Plaintiff,

v.

GOSAI, *et al.*,

Defendants.

Case No. 2:20-cv-02303-KJM-JDP (PC)

ORDER CONSTRUING PLAINTIFF'S THIRD AMENDED COMPLAINT AS A MOTION TO AMEND AND DENYING IT WITHOUT PREJUDICE

ECF No. 28

On May 6, 2022, I found that the allegations in plaintiff's third amended complaint, ECF No. 19, stated cognizable Eighth Amendment claims against defendants Gosai and Ramme. ECF No. 22. I directed service for those defendants and recommended that the remaining claims and plaintiff's motion for injunctive relief, ECF No. 20, be denied. Plaintiff did not object to those recommendations, and they are still pending before the district judge. On July 11, 2022, however, plaintiff filed a "third amended complaint"—in fact a fourth amended complaint—without seeking leave of the court.[1] I construe the newest amended complaint as a motion to

[1] Federal Rule of Civil Procedure 15(a) provides that a plaintiff may amend as a matter of course twenty-one days after the complaint is served or twenty-one days after a responsive pleading or 12(b) motion is filed. Those circumstances are not present here. Plaintiff filed his amended complaint more than twenty-one days after service was effected. Here, service was effected on May 6, 2022—the date the e-service packet was sent to the CDCR. ECF No. 25; Federal Rules of Civil Procedure 15(b)(E). Plaintiff did not file his amended complaint until July 4, 2022—the date he signed it and, presumably, placed it in the prison mail. And no responsive

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amend and deny it without prejudice. If plaintiff wishes to amend his complaint, he must file a properly supported motion and attach his proposed amended complaint thereto. He is advised that I will not look favorably on changing the fundamental nature of this suit now that service has been effected. Further, any amended complaint must be complete in itself without reference to previous pleadings.

It is ORDERED that plaintiff's third amended complaint, ECF No. 28, is construed as a motion to amend and denied without prejudice.

IT IS SO ORDERED.

Dated: August 31, 2022

JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE

pleading has been filed.