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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELVIN X. SINGLETON,

1:08-cv-00095-AWI-GSA-PC

Plaintiff,

ORDER DENYING PLAINTIFF’S REQUEST
TO PARTIALLY WITHDRAW MOTION FOR
LEAVE TO FILE SUPPLEMENTAL
COMPLAINT
(Doc. 104.)

v.

A. HEDGEPATH, et al.,

Defendants.

ORDER WITHDRAWING PLAINTIFF’S
MOTION IN ITS ENTIRETY, WITHOUT
PREJUDICE TO RENEWAL WITHIN THIRTY
DAYS
(Doc. 73.)

_____ /

Plaintiff Kelvin X. Singleton (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on January 18, 2008. (Doc. 1.) This action now proceeds on the Second Amended Complaint filed on February 12, 2009, against defendants CMO A. Youssef, CMO S. Lopez, Dr. J. Akanno, Dr. S. Qamar, Dr. Vasquez, RN II M. Ali, and RN II M. Wright-Pearson for deliberate indifference to Plaintiff’s serious medical needs in violation of the Eighth Amendment.¹ (Doc. 26.)

On June 11, 2010, Plaintiff filed a motion for leave to supplement his complaint with claims occurring after the filing of this action. (Doc. 73.) On June 24, 2010, defendants Ali,

¹Defendants Dr. S. Qamar, Dr. Vasquez, and RN II M. Wright-Pearson have not been successfully served in this action.

1 Akanno, Youssef and Lopez filed an opposition to the motion. (Doc. 78.) On November 8,
2 2010, Plaintiff filed a request to partially withdraw his motion. (Doc. 104.)

3 Plaintiff seeks to withdraw some of the claims he proposed adding in his June 11, 2010
4 motion for leave to file a supplemental complaint. To avoid confusion of the issues and
5 prejudice to defendants, the Court elects to withdraw Plaintiff's June 11, 2010 motion in its
6 entirety and grant Plaintiff leave to submit a new motion for leave to supplement the complaint,
7 clearly setting out the specific claims he proposes to include in the supplemental complaint.
8 Plaintiff is advised that he will not be granted leave to add unrelated claims or claims that have
9 not been administratively exhausted. When considering whether to allow a supplemental
10 complaint, the Court also considers factors such as whether allowing supplementation would
11 serve the interests of judicial economy; whether there is evidence of delay, bad faith or dilatory
12 motive on the part of the movant; whether amendment would impose undue prejudice upon the
13 opposing party; and whether amendment would be futile. See San Luis & Delta-Mendota Water
14 Authority v. United States Department of the Interior, 236 F.R.D. 491, 497 (E.D. Cal. 2006)
15 (citing Keith v. Volpe, 858 F.2d 467 (9th Cir. 1988), Foman v. Davis, 371 U.S. 178 (1962), and
16 Planned Parenthood of S. Ariz. v. Neely, 130 F.3d 400 (9th Cir. 1997)).

17 Based on the foregoing, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's November 8, 2010 request to partially withdraw his June 11, 2010
19 motion for leave to file a supplemental complaint is DENIED;
- 20 2. Plaintiff's June 11, 2010 motion for leave to file a supplemental complaint is
21 WITHDRAWN in its entirety, without prejudice;
- 22 3. Plaintiff is GRANTED leave to renew his motion within thirty days from the date
23 of service of this order, as instructed by this order.

24
25 IT IS SO ORDERED.

26 **Dated: December 10, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE