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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT E. COLEMAN,

Plaintiff,

v.

CDCR, et al.,

Defendants.

CASE NO. 1:09-CV-00224-DLB PC

ORDER GRANTING PLAINTIFF’S MOTION
TO AMEND COMPLAINT (DOC. 30)

FOURTH AMENDED COMPLAINT DUE
WITHIN THIRTY DAYS

ORDER DENYING DEFENDANTS’
MOTIONS TO DISMISS AS MOOT (DOCS.
32, 39)

Plaintiff Robert E. Coleman (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s third amended complaint, filed May 3, 2010, against Defendants A. Diaz, M. Lopez, and P. Maldonado for retaliation in violation of the First Amendment.

Pending before the Court is Plaintiff’s motion to amend his complaint, filed September 22, 2010. Doc. 30. Plaintiff contends that additional claims arose involving Institutional Classification Committee members T. Norton, S. Rousseau, and R. Chavez. Plaintiff contends that these Defendants assessed Plaintiff an indeterminate SHU detention pursuant to an invalid policy on August 19, 2010, in retaliation for Plaintiff filing inmate grievances and this action.

Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, leave to amend should be freely given as justice requires. As it appears that Plaintiff’s additional claims are related to the same transaction in this action, and the action is in early proceedings, the Court will grant Plaintiff an opportunity to file a fourth amended complaint in this action. The Court does not accept piecemeal pleadings. See L. R. 220 (“[E]very pleading to which an amendment or supplement is permitted as a matter of right or has been allowed by court order shall be retyped

1 and filed so that it is complete in itself without reference to the prior or superseded pleading.”).
2 Thus, claims not alleged in the fourth amended complaint are waived. *Forsyth v. Humana, Inc.*,
3 114 F.3d 1467, 1474 (9th Cir. 1997).

4 Plaintiff is reminded that a complaint must contain “a short and plain statement of the
5 claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual
6 allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action,
7 supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937,
8 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must set
9 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
10 *Id.* (quoting *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal
11 conclusions are not. *Id.* Upon filing, the Court will screen Plaintiff’s fourth amended complaint
12 pursuant to 28 U.S.C. § 1915A. Plaintiff is reminded that he is to concurrently serve Defendants
13 with his fourth amended complaint, pursuant to Federal Rule of Civil Procedure 5 and Local
14 Rule 135(f).

15 Because Plaintiff will file a fourth amended complaint, the Court will deny Defendants’
16 motions to dismiss, filed October 6, 2010 and January 19, 2011, as moot.

17 Based on the foregoing, it is HEREBY ORDERED that

- 18 1. Plaintiff’s motion to file a fourth amended complaint, filed September 22, 2010, is
19 GRANTED;
- 20 2. Plaintiff is to file his fourth amended complaint and serve Defendants his fourth
21 amended complaint within thirty (30) days from the date of service of this order;
- 22 3. Defendants’ motions to dismiss for failure to state a claim, filed October 6, 2010
23 and January 19, 2011, are DENIED as moot; and
- 24 4. Failure to comply with this order may result in dismissal of this action.

25 IT IS SO ORDERED.

26 **Dated: March 11, 2011**

27 **/s/ Dennis L. Beck**
28 UNITED STATES MAGISTRATE JUDGE