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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

KENNETH ALAN SIERRA,

1:09-cv-01514-LJO-GSA-PC

Plaintiff,

ORDER DENYING MOTION FOR LEAVE TO  
FILE SUPPLEMENTAL COMPLAINT  
(Doc. 21.)

v.

McGUINESS, et al.,

ORDER DIRECTING CLERK TO RETURN  
LODGED SUPPLEMENTAL COMPLAINT TO  
PLAINTIFF  
(Doc. 29.)

Defendants.

ORDER GRANTING MOTION FOR FOURTH  
EXTENSION OF TIME TO FILE AMENDED  
COMPLAINT  
(Doc. 30.)

THIRTY DAY DEADLINE FOR PLAINTIFF  
TO FILE FIRST AMENDED COMPLAINT

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**I. BACKGROUND**

Kenneth Alan Sierra (“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. This action was filed by plaintiff on August 27, 2009. (Doc. 1.) On February 2, 2010, the court issued an order dismissing the complaint, with leave to file an amended complaint. (Doc. 10.) Plaintiff has been granted three extensions of time but has not yet filed an amended complaint. On June 11, 2010, Plaintiff filed a motion for leave to file a supplemental complaint and lodged a proposed

1 supplemental complaint for the court's review. (Docs. 21, 29.) On July 16, 2010, Plaintiff filed a  
2 motion for an extension of time to file an amended complaint. (Doc. 30.)

## 3 **II. MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT**

4 A party may only file a supplemental complaint with leave of court. Fed.R.Civ.P. 15(d).  
5 Plaintiff requests leave to file a supplemental complaint which includes allegations of events  
6 occurring after the original complaint in this action was filed. Among other allegations,  
7 Plaintiff's proposed supplemental complaint alleges that defendants denied him of pain  
8 medication, denied him appropriate housing, illegally extracted him from his cell, and stole his  
9 property. All of these events allegedly occurred after the complaint was filed on August 27,  
10 2009.

11 Plaintiff is advised that an exhaustion requirement applies to his case. Pursuant to the  
12 Prison Litigation Reform Act ("PLRA") of 1995, "[n]o action shall be brought with respect to  
13 prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in  
14 any jail, prison, or other correctional facility until such administrative remedies as are available  
15 are exhausted." 42 U.S.C. § 1997e(a). The Section 1997e(a) exhaustion requirement applies to  
16 all prisoner suits relating to prison life. Porter v. Nussle, 435 U.S. 516, 532 (2002). Prisoners  
17 must complete the prison's administrative process, regardless of the relief sought by the prisoner  
18 and regardless of the relief offered by the process, as long as the administrative process can  
19 provide some sort of relief on the complaint stated. Booth v. Churner, 532 U.S. 731, 741 (2001).  
20 "All 'available' remedies must now be exhausted; those remedies need not meet federal standards,  
21 nor must they be 'plain, speedy, and effective.'" Porter, 534 U.S. at 524 (*citing Booth*, 532 U.S.  
22 at 739 n. 5). Exhaustion must occur prior to filing suit. McKinney v. Carey, 311 F.3d 1198,  
23 1199-1201 (9th Cir.2002). Plaintiff may not exhaust while the suit is pending. McKinney, 311  
24 F.3d at 1199-1201. Because the supplemental complaint contains allegations of events occurring  
25 after the date the original complaint in this action was filed, Plaintiff cannot have exhausted his  
26 administrative remedies with regard to those allegations before filing suit. Under the PLRA,  
27 Plaintiff is not allowed to bring unexhausted claims. Therefore, Plaintiff shall not be granted  
28 leave to file the supplemental complaint.

1 **II. MOTION FOR EXTENSION OF TIME TO FILE AMENDED COMPLAINT**

2 Plaintiff has requested a thirty-day extension of time in which to file an amended  
3 complaint, pursuant to the court's order of February 2, 2010. Good cause appearing, the  
4 extension shall be granted.

5 **III. CONCLUSION**

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

- 7 1. Plaintiff's motion to file a supplemental complaint is DENIED;
- 8 2. The Clerk of Court is DIRECTED to return to Plaintiff the supplemental  
9 complaint lodged on June 11, 2010;
- 10 3. Plaintiff's motion for extension of time to file an amended complaint is  
11 GRANTED; and
- 12 4. Within thirty days from the date of service of this order, Plaintiff shall file a First  
13 Amended Complaint, pursuant to the court's order of February 2, 2010.

14  
15 IT IS SO ORDERED.

16 **Dated: July 22, 2010**

17 /s/ Gary S. Austin  
18 UNITED STATES MAGISTRATE JUDGE