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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

| | | |
|-------------------|---|---------------------------------|
| BILAL AHDOM, |) | 1:09-cv-1874-AWI-BAM (PC) |
| |) | |
| Plaintiff, |) | ORDER DENYING DEFENDANT |
| |) | ASHBY’S MOTION TO DIMSIS SECOND |
| v. |) | AMENDED COMPLAINT AS MOOT |
| |) | |
| S. LOPEZ, et al., |) | (ECF No. 79) |
| |) | |
| Defendants. |) | |
| |) | |

Plaintiff Bilal Ahdom (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. On March 31, 2012, the Court screened Plaintiff’s first amended complaint pursuant to 28 U.S.C. § 1915A, and found that it stated an Eighth Amendment claim against Defendants Araich, Chen, Shittu, Ashby, S. Lopez, Spaeth, and Schaefer for deliberate indifference to his medical needs. (ECF No. 31.) Following service of the first amended complaint, Defendants Chen, Lopez, Schaefer and Spaeth filed an answer to the complaint on July 19, 2012, and the Court opened discovery in this matter on July 23, 2012. (ECF Nos. 37, 39.) Defendants Shittu and Araich also filed an answer to the first amended complaint. (ECF No. 54.)

On November 8, 2012, Defendant Ashby filed a motion to dismiss for failure to state a claim. (ECF No. 53.) On June 26, 2013, the Court granted Defendant Ashby’s motion to dismiss and granted Plaintiff leave to amend his claim for deliberate indifference in violation of the Eighth Amendment against Defendant Ashby. (ECF No. 74.)

1 On August 29, 2013, Plaintiff filed his second amended complaint, which named
2 Defendant Ashby as the sole defendant. (ECF No. 77.) As Plaintiff only named Defendant
3 Ashby in his second amended complaint, it was unclear whether Plaintiff understood that he
4 could continue to pursue his claims against all defendants following the motion to dismiss or
5 whether he intended to proceed in this action solely against Defendant Ashby. Accordingly, on
6 September 3, 2013, the Court directed Plaintiff to inform the Court if (1) he intended to proceed
7 only against Defendant Ashby; or (2) he intended to proceed against Defendants Araich, Chen,
8 Shittu, S. Lopez, Spaeth and Schaefer, along with Defendant Ashby, for deliberate indifference
9 to his medical needs and he required additional time to file a third amended complaint. (ECF
10 No. 78.)

11 On September 9, 2013, Defendant Ashby filed a motion to dismiss Plaintiff's second
12 amended complaint, with prejudice, for failure to state a cognizable claim. (ECF No. 79.)

13 On September 20, 2013, Plaintiff informed the Court that he intended to proceed against
14 Defendants Araich, Chen, Shittu, S. Lopez, Spaeth and Schaefer, along with Defendant Ashby.
15 Plaintiff therefore requested a forty-five day extension of time to November 1, 2013, to file a
16 third amended complaint. (ECF No. 81.) On September 23, 2013, the Court granted Plaintiff an
17 extension of time to November 1, 2013, to file a third amended complaint. (ECF No. 82.) On
18 November 1, 2013, at Plaintiff's request, the Court granted Plaintiff a brief extension of time to
19 November 15, 2013, to file his third amended complaint. (ECF No. 87.) On November 18,
20 2013, Plaintiff filed his third amended complaint date November 14, 2013. (ECF No. 90.)

21 Given Plaintiff's filing of a third amended complaint, Defendant Ashby's motion to
22 dismiss the second amended complaint is DENIED as moot. Defendant Ashby is not precluded
23 from filing a motion to dismiss any claims against him in the third amended complaint.

24
25 IT IS SO ORDERED.

26 Dated: November 19, 2013


27 _____
28 SENIOR DISTRICT JUDGE