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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSEPH A. BROWN,
Plaintiff,
vs.
UNITED STATES OF AMERICA, et al.,
Defendants.

1:12-cv-00165-AWI-GSA-PC
ORDER DENYING MOTION FOR
LEAVE TO FILE SUPPLEMENTAL
COMPLAINT
(Doc. 36; also resolves Doc. 39.)
ORDER GRANTING PLAINTIFF LEAVE
TO FILE AN ALL-INCLUSIVE FOURTH
AMENDED COMPLAINT AS
INSTRUCTED BY THIS ORDER
THIRTY DAY DEADLINE TO FILE
FOURTH AMENDED COMPLAINT

I. BACKGROUND

Joseph A. Brown ("Plaintiff") is a federal prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to Bivens vs. Six Unknown Agents, 403 U.S. 388 (1971). Plaintiff filed the Complaint commencing this action on February 6, 2012. (Doc. 1.) On April 4, 2012, Plaintiff filed the First Amended Complaint. (Doc. 7.) On February 8, 2013, Plaintiff filed the Second Amended Complaint, with consent of the court. (Doc. 21.) On August 9, 2013, Plaintiff filed a motion to amend the complaint, which was granted by the court on August 19, 2013. (Docs. 22, 24.)

On September 23, 2013, Plaintiff filed the Third Amended Complaint and a motion for leave to file a supplemental complaint. (Docs. 36, 37.) On October 28, 2013, Plaintiff lodged a proposed Supplemental Complaint. (Doc. 42.)

1 **III. SUPPLEMENTAL COMPLAINTS – RULE 15(d)**

2 Under Rule 15(d), “the court may, on just terms, permit a party to serve a supplemental
3 pleading setting out any transaction, occurrence, or event that happened after the date of the
4 pleading to be supplemented.” Fed. R. Civ. P. 15(d). A party may only file a supplemental
5 complaint with leave of court. Id. When considering whether to allow a supplemental
6 complaint, the Court considers factors such as whether allowing supplementation would serve
7 the interests of judicial economy; whether there is evidence of delay, bad faith or dilatory
8 motive on the part of the movant; whether amendment would impose undue prejudice upon the
9 opposing party; and whether amendment would be futile. See San Luis & Delta-Mendota
10 Water Authority v. United States Department of the Interior, 236 F.R.D. 491, 497 (E.D. Cal.
11 2006) (citing Keith v. Volpe, 858 F.2d 467 (9th Cir. 1988), Foman v. Davis, 371 U.S. 178
12 (1962), and Planned Parenthood of S. Ariz. v. Neely, 130 F.3d 400 (9th Cir. 1997)).

13 **III. PLAINTIFF’S MOTION**

14 Plaintiff’s motion consists, in its entirety, of the following:

15 “I hereby request permission from the court to file a supplemental
16 complaint in this case (Fed. R. Civ. P. 15(d)), to tell of events that
17 have happened since the filing of this case, and to seek injunctive
relief, & declaratory relief concerning this case and issues, as
well as a new legal claim.” (Doc. 36.)

18 **IV. DISCUSSION**

19 The court has reviewed Plaintiff’s Third Amended Complaint and proposed
20 Supplemental Complaint.

21 **Third Amended Complaint**

22 In the Third Amended Complaint, Plaintiff names as defendants Correctional Officer
23 Briceton, Lt./DHO Gonzalez, Doe Defendant #1 (Physician’s Assistant), Doe Defendant #2
24 (Doctor), Paul Copenhagen (Warden), and Robert McFadden (Western Regional Director).
25 The events at issue allegedly occurred at the United States Penitentiary in Atwater, California
26 (USP-Atwater) when Plaintiff was incarcerated there. Plaintiff alleges that employees at USP-
27 Atwater retaliated against him, after a case against Plaintiff concerning a May 2008 incident
28 with an officer at USP-Atwater was dismissed. Plaintiff alleges that Warden Copenhagen and

1 Regional Director McFadden conspired to retaliate against him by referring him to a lockdown
2 control unit after they both were made aware that Plaintiff suffers from mental illness and filed
3 grievances to protest the referral. Plaintiff alleges that Lt./DHO Gonzalez joined the
4 conspiracy when, disguised as a Lieutenant, he intentionally denied Plaintiff due process at the
5 hearing referring him to lockdown. Plaintiff had also told Lt./DHO Gonzalez about his mental
6 illness. Plaintiff also alleges he was assaulted by C/O Briceton, who threatened to punish him
7 for the May 2008 incident. Plaintiff alleges that the two Doe Defendants refused to treat him
8 for a serious case of food poisoning. Plaintiff requests monetary damages as relief.

9 **Proposed Supplemental Complaint**

10 In the proposed Supplemental Complaint, Plaintiff names as defendants Paul
11 Copenhagen (Warden) and Robert McFadden (Regional Director) (collectively, "Defendants").
12 The events at issue in the Supplemental Complaint occurred at USP-Atwater when Plaintiff
13 was incarcerated there. Plaintiff alleges that Defendants retaliated against him in September
14 2011 after he stood trial and was exonerated for a May 2008 incident that occurred with a staff
15 officer at USP-Atwater. Plaintiff alleges that Defendants conspired to retaliate against him by
16 referring him to a lockdown control facility, knowing that Plaintiff has a documented mental
17 illness. Plaintiff requests monetary damages and injunctive and declaratory relief.

18 Plaintiff's allegations in the proposed Supplemental Complaint of retaliation against
19 him by defendants Copenhagen and McFadden, appear to be a continuation of Plaintiff's
20 allegations against the same two defendants in the Third Amended Complaint. As such, all of
21 Plaintiff's claims against defendants Copenhagen and McFadden are related under Rule 18(a),
22 which provides that "A party asserting a claim to relief as an original claim, counterclaim,
23 cross-claim, or third-party claim, may join, either as independent or as alternate claims, as
24 many claims, legal, equitable, or maritime, as the party has against an opposing party." Fed. R.
25 Civ. P. 18(a). Therefore, all of Plaintiff's allegations and claims against defendants
26 Copenhagen and McFadden may be brought in one action.

27 There is no need for Plaintiff to file a supplemental complaint to add his later
28 allegations and claims. Because Plaintiff's later allegations occurred in 2011, *before* Plaintiff

1 filed this action in February 2012, all of Plaintiff's allegations against defendants Copenhaver
2 and McFadden may be included in one complaint. Therefore, Plaintiff's motion to file a
3 supplemental complaint shall be denied, and Plaintiff shall instead be granted leave to file a
4 Fourth Amended Complaint which includes all of the related events at issue which occurred
5 before the original Complaint was filed on February 6, 2012.¹

6 **V. CONCLUSION AND ORDER**

7 The court finds that all of Plaintiff's related claims may be included in one complaint.
8 Plaintiff shall be granted thirty days in which to file a Fourth Amended Complaint which
9 includes all of his related claims arising from events occurring before February 6, 2012.

10 Plaintiff is reminded that he must demonstrate in his amended complaint how the
11 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
12 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms
13 how each named defendant is involved. There can be no liability under 42 U.S.C. § 1983
14 unless there is some affirmative link or connection between a defendant's actions and the
15 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164,
16 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

17 The amended complaint should be brief, but must state what each named defendant did
18 that led to the deprivation of Plaintiff's constitutional or other federal rights. Fed. R. Civ. P.
19 8(a); Ashcroft v. Iqbal, 556 U.S. 662, 676-77 (2009); Jones v. Williams, 297 F.3d 930, 934
20 (9th Cir. 2002). There is no *respondeat superior* liability, and each defendant is only liable for
21 his or her own misconduct. Id. at 683. Plaintiff must set forth "sufficient factual matter . . . to
22 'state a claim that is plausible on its face.'" Id. at 663 (quoting Bell Atlantic Corp. v. Twombly,
23 550 U.S. 544, 555 (2007)). Plaintiff must also demonstrate that each defendant *personally*
24 participated in the deprivation of his rights. Jones, 297 F.3d at 934 (emphasis added).

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28 ¹ "Rule 15(a) is very liberal and leave to amend 'shall be freely given when justice so requires.'" AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir. 2006) (quoting Fed. R. Civ. P. 15(a)).

1 The amended complaint should be clearly and boldly titled "Fourth Amended
2 Complaint," refer to the appropriate case number, and be an original signed under penalty of
3 perjury.

4 Accordingly, it is HEREBY ORDERED that:

- 5 1. Plaintiff's request for leave to file a supplemental complaint, filed on September
6 23, 2013, is DENIED;
- 7 2. Plaintiff is granted leave to file a Fourth Amended Complaint;
- 8 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file a
9 Fourth Amended Complaint as discussed above, using the court's form;
- 10 4. The amended complaint should be clearly and boldly titled "Fourth Amended
11 Complaint," refer to case number 1:12-cv-00165-AWI-GSA-PC, and be an
12 original signed under penalty of perjury;
- 13 5. The Clerk of the Court shall send one civil rights complaint form to Plaintiff;
14 and
- 15 6. Plaintiff is warned that the failure to comply with this order will result in a
16 recommendation that this action be dismissed for failure to obey a court order.

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19 IT IS SO ORDERED.

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21 Dated: November 20, 2013

/s/ Gary S. Austin
22 UNITED STATES MAGISTRATE JUDGE
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