

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

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

HOMER TYRONE LEWIS,)	Case No.: 1:12-cv-00856-LJO-BAM (PC)
)	
Plaintiff,)	SECOND ORDER DIRECTING PLAINTIFF TO
)	EITHER FILE AMENDED COMPLAINT OR
v.)	NOTIFY COURT OF WILLINGNESS TO
)	PROCEED ON COGNIZABLE CLAIMS
KATHLEEN ALISON, et al.,)	
)	
Defendants.)	
)	
)	
)	

Plaintiff Homer Tyrone Lewis (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his second amended complaint on September 6, 2013. On October 8, 2013, the Court screened Plaintiff’s second amended complaint and found that it stated a cognizable claim of retaliation in violation of the First Amendment against Defendants Alison, Adams, Junious, Denny, Parr and Garza, but did not state any other claims for relief under section 1983. The Court ordered Plaintiff to either file an amended complaint or notify the Court in writing that that he is willing to proceed only on his claim of retaliation. (ECF No. 17.)

On October 23, 2013, Plaintiff filed two documents: (1) a notification of his willingness to proceed on the cognizable claim of retaliation (ECF No. 18); and (2) a declaration and request for judicial notice of a typographical error (ECF No. 19). In the declaration and request for judicial notice, Plaintiff states that he made a typographical error throughout the second amended complaint

1 and, based on the changed wording, asks the Court to reconsider whether he stated a cognizable claim
2 for denial of access to the court. (ECF No. 15, p. 19.) This request is not consistent with Plaintiff's
3 notice that he is willing to proceed only on his claim for retaliation. Plaintiff must clarify his intent.

4 Accordingly, IT IS HEREBY ORDERED that within thirty (30) days from the date of service
5 of this order, Plaintiff must either:

6 1. File a third amended complaint to correct the typographical error and/or cure the
7 deficiencies identified by the Court in its October 8, 2013 order; or

8 2. Notify the Court in writing that he does not wish to file an amended complaint and is
9 willing to proceed only on his claim of retaliation in violation of the First Amendment against
10 Defendants Alison, Adams, Junious, Denny, Parra and Garza.

11 If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a
12 court order.

13 IT IS SO ORDERED.

14 Dated: October 25, 2013

/s/ Barbara A. McAuliffe
15 UNITED STATES MAGISTRATE JUDGE