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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KELVIN FELTON,

Plaintiff,

v.

J. LOPEZ, et al.,

Defendants.

1:12-cv-01066-AWI-GSA-PC

ORDER GRANTING PLAINTIFF’S
RENEWED MOTION FOR LEAVE TO FILE
SUPPLEMENTAL COMPLAINT
(Doc. 19.)

THIRTY DAY DEADLINE TO FILE
SUPPLEMENTAL COMPLAINT AS
INSTRUCTED BY THIS ORDER

I. BACKGROUND

Kelvin Felton (“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 the Complaint commencing this action on June 29, 2012. (Doc. 1.)

On August 24, 2012, Plaintiff filed a motion for leave to file a supplemental complaint, to add allegations of excessive force against defendant C/O J. Lopez based on an incident occurring after the original Complaint was filed on June 29, 2012. (Doc. 10.) Plaintiff provided a copy of a Form-602 inmate appeal which he submitted on July 20, 2012, in which he alleges that on July 20, 2012, as he was leaving the dining hall, C/O J. Lopez pushed him from behind for no reason and extended his baton, attempting to provoke an altercation. (Id. at 3-4.) On February 13, 2013, the Court denied Plaintiff’s motion for leave to supplement the complaint, without prejudice to renewal of the motion with Plaintiff’s declaration, signed under penalty of perjury, that he exhausted all available administrative remedies for the new excessive force claim against defendant C/O Lopez. (Doc. 12.)

1 On March 13, 2013, Plaintiff filed a renewed motion for leave to file a supplemental
2 complaint, together with a declaration addressing the exhaustion issue. (Doc. 16.) However,
3 Plaintiff's declaration was not signed under penalty of perjury as required by the Court. On March
4 18, 2013, the Court denied Plaintiff's renewed motion, without prejudice to renewal of the motion
5 with Plaintiff's declaration signed under penalty of perjury stating that he attempted, but was
6 prevented from, exhausting administrative remedies for the later-occurring incident he seeks to add
7 to the Complaint. (Doc. 17.) On April 1, 2013, Plaintiff filed a renewed motion for leave to file a
8 supplemental complaint, together with a declaration addressing the exhaustion issue and signed
9 under penalty of perjury. (Docs. 19, 20.)

10 Plaintiff's renewed motion for leave to file a supplemental complaint is now before the
11 Court.

12 **II. MOTION FOR LEAVE TO FILE SUPPLEMENTAL COMPLAINT**

13 A supplemental complaint, which is different than an amended complaint, adds allegations
14 to the complaint of events occurring after the original complaint was filed. Fed. R. Civ. P. 15(d).
15 Under Rule 15(d), "the court may, on just terms, permit a party to serve a supplemental pleading
16 setting out any transaction, occurrence, or event that happened after the date of the pleading to be
17 supplemented." Id. A party may only file a supplemental complaint with leave of court. Id. When
18 considering whether to allow a supplemental complaint, the Court considers factors such as whether
19 allowing supplementation would serve the interests of judicial economy; whether there is evidence
20 of delay, bad faith or dilatory motive on the part of the movant; whether amendment would impose
21 undue prejudice upon the opposing party; and whether amendment would be futile. See San Luis
22 & Delta-Mendota Water Authority v. United States Department of the Interior, 236 F.R.D. 491, 497
23 (E.D. Cal. 2006) (citing Keith v. Volpe, 858 F.2d 467 (9th Cir. 1988), Foman v. Davis, 371 U.S. 178
24 (1962), and Planned Parenthood of S. Ariz. v. Neely, 130 F.3d 400 (9th Cir. 1997)).

25 **Discussion**

26 Plaintiff shall be granted leave to file a supplemental complaint adding allegations of
27 excessive force against defendant C/O J. Lopez based on an incident occurring on July 20, 2012, as
28 documented by the CDC-602 form Plaintiff submitted with his August 24, 2012 motion. (Doc. 10

1 at 3-4.) On February 13, 2013, the Court found that Plaintiff's Complaint filed on June 29, 2012
2 states cognizable claims for excessive force against defendants C/O Lopez and C/O Harrison. (Doc.
3 13.) In the August 24, 2012 motion for leave to supplement the Complaint, Plaintiff indicates that
4 defendant C/O Lopez continues to use force unnecessarily against him, and Plaintiff wishes to make
5 additional allegations against Lopez for excessive force which occurred after the original Complaint
6 was filed. The Court finds that supplementation of the Complaint with these new allegations would
7 serve the interests of judicial economy because Plaintiff's related claims would be included in one
8 lawsuit. It appears from Plaintiff's declaration signed under penalty of perjury, in which Plaintiff
9 states that he attempted to exhaust administrative remedies for the July 20, 2012 incident, that
10 Plaintiff exhausted the remedies available to him. (Doc. 20.)

11 Based on the foregoing, the Court shall grant Plaintiff's renewed motion to file a
12 supplemental complaint, for the purpose of adding allegations of excessive force against defendant
13 C/O J. Lopez based on an incident occurring on July 20, 2012.

14 **III. CONCLUSION**

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's renewed motion to file a supplemental complaint, filed on April 1, 2013,
17 is GRANTED, for the sole purpose of adding allegations of excessive force against
18 defendant C/O J. Lopez based on an incident occurring on July 20, 2012, as
19 documented by the CDC-602 form Plaintiff submitted with his August 24, 2012
20 motion;
- 21 2. Plaintiff is granted thirty days from the date of service of this order in which to file
22 a supplemental complaint as described in this order; and
- 23 3. Plaintiff's failure to comply with this order shall result in a recommendation that this
24 action be dismissed for failure to comply with a court order.

25
26 IT IS SO ORDERED.

27 **Dated: April 3, 2013**

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