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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GORDON C. REID,  
Plaintiff,  
v.  
UNITED STATES OF AMERICA, et al.,  
Defendants.

Case No. 1:14-cv-01163-NONE-JLT (PC)

**ORDER GRANTING PLAINTIFF’S  
MOTION FOR MISCELLANEOUS  
RELIEF**

(Doc. 88)

**ORDER DIRECTING PLAINTIFF TO  
FILE A SECOND AMENDED  
COMPLAINT OR A NOTICE OF HIS  
DESIRE TO PROCEED ONLY ON  
EIGHTH AMENDMENT CLAIMS**

30-DAY DEADLINE

Plaintiff brings this action pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971) and the Federal Tort Claims Act. On July 28, 2015, the Court screened Plaintiff’s first amended complaint (Doc. 28) and found that it stated a cognizable First Amendment retaliation claim under *Bivens*, but that its FTCA claims and Eighth Amendment excessive force and conditions of confinement claims were not cognizable. (Doc. 31.) On October 28, 2016, the Court dismissed the FTCA and Eighth Amendment claims. (Doc. 45.)

On February 2, 2018, Defendants filed a motion to dismiss the remaining, First Amendment retaliation claim. (Doc. 71.) The Court granted the motion and dismissed the claim and this action on April 25, 2018. (Doc. 76.) Plaintiff appealed the order of dismissal. (Doc. 78.)

1 On September 2, 2020, the Ninth Circuit Court of Appeals affirmed the dismissal of the  
2 First Amendment retaliation claims, but it reversed the dismissals of the excessive force,  
3 conditions of confinement, and FTCA claims. (Doc. 84.) The judgment took effect on October 26,  
4 2020. (Doc. 87.) The Ninth Circuit noted that this Court had dismissed the FTCA claims for  
5 Plaintiff’s failure to plead exhaustion, but that, on appeal, Plaintiff asserted that he can show that  
6 he exhausted the FTCA claims. (Doc. 84 at 7.) The Ninth Circuit, therefore, remanded the FTCA  
7 claims to this Court to determine if amendment would be futile. (*Id.*) Plaintiff now requests a  
8 “post-appeal procedural order” regarding this action. (Doc. 88.)

9 The Court does not find that amendment would be futile. Therefore, the Court will grant  
10 Plaintiff leave to file an amended complaint to properly plead exhaustion of his FTCA claims.  
11 The Court reminds Plaintiff that an amended complaint supersedes the original complaint and  
12 prior amendments. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th Cir. 2012). Thus, a second  
13 amended complaint must be “complete in itself without reference to the prior or superseded  
14 pleading.” Local Rule 220. The Court provides Plaintiff with an opportunity to amend his  
15 complaint to cure the deficiencies identified herein. However, he may not change the nature of  
16 this suit by adding unrelated claims in an amended complaint. Accordingly, the Court **ORDERS**:

- 17 1. Plaintiff’s motion for a “post-appeal procedural order” (Doc. 88) is GRANTED;
- 18 2. Plaintiff is GRANTED leave to file a second amended complaint;
- 19 3. The Clerk’s Office shall send Plaintiff a civil rights complaint form; and,
- 20 4. **Within 30 days** of the date of service of this order, Plaintiff shall file one of the  
21 following items:
  - 22 a. a second amended complaint curing the deficiencies in his pleading, or

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b. a notice that he wishes to (1) proceed only on his Eighth Amendment excessive force and conditions of confinement claims under *Bivens* and (2) dismiss his FTCA claims.

IT IS SO ORDERED.

Dated: January 5, 2021

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE