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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTWOINE BEALER,

 Plaintiff,

 v.

KERN VALLEY STATE PRISON,

 Defendant.

Case No. 1:16-cv-00367-DAD-SKO (PC)

**ORDER ON PLAINTIFF’S NOTICE OF ERROR
AND GRANTING PLAINTIFF’S MOTION FOR
AN EXTENSION OF TIME TO FILE AMENDED
COMPLAINT**

(Docs. 13, 14, 16)

THIRTY (30) DAY DEADLINE

Plaintiff, Antwoine Bealer, is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. The Complaint was screened and dismissed with leave to amend on January 27, 2017. (Doc. 10.) Plaintiff requested and received an extension of time to file an amended complaint. (Docs. 11, 12.) On March 7, 2017, the First Amended Complaint was filed in this action. (Doc. 13.) On March 20, 2017, a Second Amended Complaint was lodged in this action. (Doc. 14.)

On August 21, 2017, the First and Second Amended Complaints were dismissed with leave to amend. (Doc. 15.) In its order, the Court noted that in the First Amended Complaint, Plaintiff had wholly changed both the nature of claims asserted and the prison employees who allegedly violated his civil rights. (*Id.*) The Court also noted that the document lodged as a second amended complaint is deficient as an amended complaint since it only contains legal arguments, without any factual allegations. (*Id.*)

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1 On September 18, 2017, Plaintiff filed a request for an extension of time to file an
2 amended complaint in which he explained that, although presented on an amended civil rights
3 complaint form, Plaintiff did not intend to file the First Amended Complaint (Doc. 13) in this
4 action, but instead intended that it be opened as a separate, new case with different factual
5 allegations and state actors. (Doc. 16.) The Court notes that the number for this case was not
6 written on the amended complaint form by Plaintiff, but by personnel in the Clerk's Office. (Doc.
7 13.) It appears that the Clerk's Office errantly filed Plaintiff's new complaint as the First
8 Amended Complaint in this action, instead of opening a new case, and then mistakenly lodged
9 Plaintiff's amended pleading as a Second Amended Complaint. This error requires correction.

10 Further, although Plaintiff seeks a sixty (60) day extension of time to file an amended
11 complaint, he provides only minimal justification for his request. Thus, Plaintiff has not shown
12 good cause for a sixty (60) day extension of time, but is granted a thirty (30) day extension of
13 time to amend his pleading.

14 Accordingly, it is **HEREBY ORDERED** that:

- 15 1. The First Amended Complaint, filed on March 7, 2017, (Doc. 13), is **STRICKEN**
16 from the record in this case and the Clerk's Office is directed to open it as a new
17 case;
- 18 2. The Clerk's Office is directed to file the Amended Complaint, which was lodged
19 on March 20, 2017, (Doc. 14), and to rename it as "FIRST AMENDED
20 COMPLAINT";
- 21 3. The Clerk's Office is directed to send Plaintiff a copy of the order dismissing
22 complaint with leave to amend which issued on January 27, 2017, (Doc. 10), along
23 with service of this order;
- 24 4. Plaintiff is granted thirty (30) days from the date of service of this order to file a
25 second amended complaint which must comply with the standards in the January
26 27, 2017 screening order; and

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5. **Plaintiff's failure to comply with this order will result in recommendation that this action be dismissed for Plaintiff's failure to obey a court order and to state a claim upon which relief may be granted.**

IT IS SO ORDERED.

Dated: **September 22, 2017**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE