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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY WILLIAM CORTINAS,
Plaintiff,
v.
CONALL MCCABE, et al.,
Defendants.

1:16-cv-0558 LJO MJS (PC)

ORDER
(1) GRANTING PLAINTIFF’S REQUEST FOR RULING;
(2) DENYING PLAINTIFF’S MOTION TO SUPPLEMENT; AND
(3) STRIKING LODGED AMENDED COMPLAINT
(ECF NOS. 40, 48, 55)

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Given the District Court’s adoption of the undersigned’s November 13, 2017, findings and recommendations to dismiss certain claims (for failure to exhaust administrative remedies), the action is ready to proceed on Plaintiff’s First Amended Complaint against Sgt. Vogel on an Eighth Amendment excessive force claim stemming from an August 2015 incident. (ECF Nos. 41, 52, 57.) (Plaintiff’s Eighth Amendment medical indifference claim against Defendants E. Clark, O. Beregovskaya, P. Lenoir, and C. McCabe, and his Fourteenth Amendment equal protection claim against E. Clark, O. Beregovskaya, P. Lenoir, C. McCabe, and R. Vogel have been dismissed.)

1 Pending before the Court is Plaintiff's request to file a supplemental pleading
2 pursuant to Federal Rule of Civil Procedure 15(d). (ECF No. 40.) Plaintiff claims that
3 several events occurred after he initiated service on Defendants, including a May 5,
4 2017, directive by former Defendants Dr. McCabe and Dr. Clark to stop Plaintiff's pain
5 medication in retaliation for Plaintiff's initiation of this action. Dr. McCabe also allegedly
6 denied a neurosurgeon's recommendation for another medication, leaving Plaintiff in
7 severe pain and non-functional. Additionally, Plaintiff seeks to add a new Defendant, Dr.
8 R. Gill, who allegedly stopped other pain medication because of Plaintiff's faith.

9 Rule 15(d) provides the mechanism for supplemental pleading. Pursuant to this
10 Rule, the court may permit a party to supplement his complaint in order to set out any
11 transaction, occurrence, or event that happened since the date of the pleading sought to
12 be supplemented. Id. A supplemental pleading, however, may not introduce a "separate,
13 distinct and new cause of action." Planned Parenthood of S. Arizona v. Neely, 130 F.3d
14 400, 402 (9th Cir. 1997) (citation omitted). "To comply with Rule 8 each plaintiff must
15 plead a short and plain statement of the elements of his or her claim, identifying the
16 transaction or occurrence giving rise to the claim and the elements of the prima facie
17 case." Bautista v. Los Angeles County, 216 F.3d 837, 840-41 (9th Cir. 2000) (internal
18 quotations and citations omitted). "Unrelated claims against different defendants belong
19 in different suits, not only to prevent the sort of morass [a multiple claim, multiple
20 defendant] suit produce[s], but also to ensure that prisoners pay the required filing
21 fees—for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or
22 appeals that any prisoner may file without prepayment of the required fees." K'napp v.
23 California Dept. of Corrections, 2013 WL 5817765, at *2 (E.D. Cal., Oct. 29, 2013), aff'd
24 sub nom. K'napp v. California Dept. of Corrections & Rehabilitation, 599 Fed. Appx. 791
25 (9th Cir. 2015) (internal quotations and citations omitted).

26 As noted, Plaintiff is proceeding in this action on a single excessive force claim
27 against Sgt. Vogel. His supplemental pleading, however, seeks to assert new claims for
28 inadequate medical care against two now-dismissed Defendants, Dr. McCabe and Dr.

1 Clark. It also seeks to add an entirely new claim against a new Defendant. Since these
2 new claims and Defendants do not implicate Sgt. Vogel or relate to the conduct
3 underlying this action, they must be brought in a separate suit after Plaintiff exhausts his
4 administrative remedies on them. For this reason, Plaintiff's motion to supplement must
5 be denied, and his lodged amended complaint will be stricken.

6 Based on the foregoing, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's motion for ruling (ECF No. 55) is GRANTED;
- 8 2. Plaintiff's motion to file a supplemental pleading (ECF No. 40) is DENIED; and
- 9 3. Plaintiff's lodged amended pleading (ECF No. 48) shall be STRICKEN.

10 IT IS SO ORDERED.

11
12 Dated: January 9, 2018

13 /s/ Michael J. Seng
14 UNITED STATES MAGISTRATE JUDGE