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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MATTHEW H. BECKETT,

Plaintiff,

v.

MORENO, *et al.*,

Defendants.

Case No. 1:20-cv-01427-NONE-BAM (PC)

ORDER STAYING DEADLINES FOR
PLAINTIFF TO RESPOND TO
DEFENDANTS’ MOTION FOR SUMMARY
JUDGMENT AND MOTION TO STAY
DISCOVERY AND SCHEDULING ORDER
(ECF Nos. 27, 28)

ORDER REQUIRING PLAINTIFF TO FILE
MOTION SEEKING LEAVE TO AMEND OR
LODGED SECOND AMENDED
COMPLAINT WILL BE STRICKEN
(ECF No. 26)

THIRTY (30) DAY DEADLINE

Plaintiff Matthew H. Beckett (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s first amended complaint against Defendants Sedillo and Moreno for excessive force in violation of the Eighth Amendment for the incident on October 21, 2018, for force used after the time Plaintiff lost consciousness.

Defendants filed an answer to the first amended complaint on March 26, 2021. (ECF No. 21.) On July 15, 2021, Plaintiff submitted a proposed second amended complaint, but it was not accompanied by a motion seeking leave to amend. (ECF No. 26.) On July 16, 2021, Defendants filed a motion for summary judgment together with a motion to stay the deadlines in the Court’s

1 April 29, 2021 Discovery and Scheduling Order. (ECF Nos. 27, 28.)

2 Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiff may only amend his
3 pleading with Defendants' written consent or the Court's leave. As it does not appear that
4 Plaintiff has obtained Defendants' written consent to file a second amended complaint, Plaintiff
5 must obtain leave of Court. Although the Court will freely give leave to amend when justice so
6 requires, Plaintiff has not provided any explanation for his desire to submit a second amended
7 complaint. Plaintiff will therefore be permitted an opportunity to file a motion to amend, and
8 Defendants will have an opportunity to respond pursuant to Local Rule 230(1).

9 Accordingly, IT IS HEREBY ORDERED as follows:

- 10 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a motion
11 seeking leave to file an amended complaint;
- 12 2. The deadlines for Plaintiff to respond to Defendants' motion for summary judgment and
13 motion to stay the deadlines in the Court's Discovery and Scheduling Order are STAYED
14 pending resolution of Plaintiff's motion to amend; and
- 15 3. **If Plaintiff fails to file a motion to amend in compliance with this order, Plaintiff's**
16 **lodged second amended complaint will be stricken from the record and this action**
17 **will proceed on Plaintiff's first amended complaint.**

18 IT IS SO ORDERED.

19 Dated: July 16, 2021

20 /s/ Barbara A. McAuliffe
21 UNITED STATES MAGISTRATE JUDGE