UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOE FIERRO,

Plaintiff,

v.

J. RUIZ, et al.,

Defendants.

No. 1:24-cv-01413 KES GSA (PC)

ORDER DISCHARGING SHOWING OF CAUSE AND DENYING PLAINTIFF'S REQUEST FOR A STAY OF THESE PROCEEDINGS

(See ECF No. 14)

SECOND ORDER DIRECTING PLAINTIFF TO FILE FIRST AMENDED COMPLAINT

PLAINTIFF'S FIRST AMENDED COMPLAINT DUE IN THIRTY DAYS

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

Before this Court is Plaintiff's response to the Court's recently issued order to show cause. ECF Nos. 13, 14 (order to show cause; Plaintiff's response to same). For the reasons stated below, the order to show cause will be discharged and Plaintiff's request for a stay of these proceedings will be denied. In addition, Plaintiff will be ordered to file a first amended complaint. He will be given thirty days to do so.

I. RELEVANT BACKGROUND

A. Plaintiff's Complaint

On November 19, 2024, Plaintiff's complaint along with his application to proceed in forma pauperis were docketed. ECF Nos. 1, 2. The complaint loosely alleged violations of right stemming from Defendants' write up of an alleged false rules violation report on Plaintiff in retaliation for having filed grievances against Defendants, and Defendants' denial of an investigative employee at the rules violation report hearing. See ECF No. 1 at 3-5. Shortly thereafter, upon receipt of Plaintiff's prison trust fund account statement (see ECF No. 6), Plaintiff's in forma pauperis application was granted (ECF No 7).

B. Grant of Leave to Amend

On December 12, 2024, a request from Plaintiff asking whether he could attach a single page to his original complaint was docketed. ECF No. 10. Days later, Plaintiff also filed a motion for leave to file an amended complaint, and within the motion itself included a "proposed Amended Complaint", but importantly did not separately lodge an amended complaint. See ECF No. 11. On December 23, 2024, the motion to attach an additional page was denied, but Plaintiff's request for leave to amend was granted. See ECF No. at 12 at 2-3. Plaintiff was then given thirty days to file an amended complaint. Id. at 3.

C. Failure to Amend

More than thirty days has now passed, and Plaintiff has not filed an amended complaint, nor did Plaintiff request an extension of time to do so. As a result, on February 7, 2025, Plaintiff was ordered to show cause why the matter should not be dismissed. ECF No. 13. As an alternative to filing the showing of cause, Plaintiff was also told that he could file the amended complaint. Id. at 2-3. Plaintiff was given yet another thirty days to take either course of action.

II. PLAINTIFF'S SHOWING OF CAUSE

Plaintiff opted to file the showing of cause. See ECF No. 14. In it, ultimately, he states that he was unable to timely file his amended complaint because he was "separated" from the person in the prison who provided him with legal assistance. ECF No. 14 at 1-2. However, in the showing, Plaintiff also references "act[ing] in the local court on Writ of Habeas Corpus. Id. at 1-

2 (brackets added). In addition, he asks in part that the Court stay these proceedings so that the lower court that is reviewing his writ of habeas corpus can rule on it. Id. at 2.

III. DISCUSSION

Plaintiff's statement to the Court that he no longer has access to the person who was assisting him is an adequate reason why Plaintiff did not file his amended complaint in a timely manner. As a result, the order to show cause will be discharged, and Plaintiff will be given yet another opportunity to file an amended complaint. However, Plaintiff's request to stay this matter will be denied and he will be ordered to file an amended complaint and to do so within thirty days.

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of Court shall send Plaintiff a copy of the Court's Civil Rights Complaint by a Prisoner form;

2. The Court's order to show cause issued February 7, 2025 (ECF No. 13) is DISCHARGED;

3. Plaintiff's request to stay this matter (see ECF No. 14 at 2) is DENIED, and

4. Within thirty days from the date of this order, Plaintiff shall file a first amended complaint.

Plaintiff is cautioned that failure to comply with this order within the time allotted may result in a recommendation that this matter be dismissed.

IT IS SO ORDERED.

Dated: **March 9, 2025**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE