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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

KELVIN SIMS,

No. 2:15-CV-0713-CMK-P

Plaintiff,

vs.

ORDER

SMITH, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are: (1) plaintiff’s motion for an extension of time (Doc. 22) to file a second amended complaint; and (2) plaintiff’s motion to proceed with the original complaint (Doc. 23).

On January 28, 2016, the court denied plaintiff’s motions for leave to amend as unnecessary. Plaintiff was advised that he could amend as-of-right but that, if he did not do so within 30 days, the action would proceed on the original complaint. Plaintiff then filed a first amended complaint. The court dismissed the first amended complaint with leave to amend and directed plaintiff to file a second amended complaint. As of June 9, 2017, the time to file a second amended complaint expired and the court directed plaintiff to show cause why the action

1 should not be dismissed. Plaintiff responded by seeking additional time to file a second amended  
2 complaint. The court granted two requests for additional time.

3 In his motion for a further extension of time, plaintiff states that additional time is  
4 needed to file a second amended complaint due to a lock-down related to a “statewide search.”  
5 In his motion to proceed on the original complaint, plaintiff anticipates that, due to the lock-  
6 down, he will be unable to file a second amended complaint. He asks the court to proceed on the  
7 original complaint instead.

8 Because the original complaint was superceded by the first amended complaint,  
9 the court cannot refer to the original complaint as the operative pleading in this action. To the  
10 extent the lock-down prevents plaintiff from filing a second amended complaint within the time  
11 set by the court, plaintiff is able to seek additional extensions of time. In the meantime, and good  
12 cause appearing therefor, the court will grant plaintiff’s motion for an extension of time to file a  
13 second amended complaint. Plaintiff is again cautioned that failure to comply may result in  
14 dismissal of the action. See Local Rule 110.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff’s motion to proceed on the original complaint (Doc. 23) is  
17 denied;  
18 2. Plaintiff’s motion for an extension of time (Doc. 22) is granted; and  
19 3. Plaintiff shall file a second amended complaint within 60 days of the date  
20 of this order.

21  
22 DATED: October 11, 2017

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25 **CRAIG M. KELLISON**  
26 UNITED STATES MAGISTRATE JUDGE