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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARK ANTHONY DUROSS,
Plaintiff,
v.
CALIFORNIA STATE PRISON, et al.,
Defendants.

No. 2:15-cv-1872-GEB-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On August 18, 2016, the court dismissed his complaint with leave to amend within thirty days. ECF No. 9. The court also granted plaintiff’s application for leave to proceed in forma pauperis and directed the California Department of Corrections and Rehabilitation to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2). ECF No. 10. Plaintiff filed several documents in response, including “objections,” a request for an extension of time to file an amended complaint, an “amended complaint,” and a “motion for relief or new trial.” As explained below, plaintiff’s objections are overruled, his request for an extension of time to file an amended complaint is granted, and his motion for relief or new trial is denied.

Plaintiff objects to the court’s order requiring his payment of the filing fee pursuant to the in forma pauperis statute, 28 U.S.C. § 1915(b), on the grounds that he is indigent. ECF No. 12.

1 This objection lacks merit. Section 1915(b)(2) requires that a prisoner proceeding in forma
2 pauperis pay “the full amount of the filing fee” through “monthly payments.” In plaintiff’s
3 signed application for leave to proceed in forma pauperis, he expressly authorized the collection
4 of funds from his trust account for payments “in accordance with 28 U.S.C. § 1915(b)(2).” ECF
5 No. 2 at 2. Accordingly, the objection is overruled.

6 Plaintiff also seeks an extension of time to file an amended complaint, explaining that he
7 needs the extension in order “to complete an amount of court documents that date back to 1999 to
8 2014”¹ ECF No. 13 at 1; ECF No. 15 at 1. Because this case is only in the pleading stage,
9 plaintiff need not prove his claims with evidence at this time. At this stage, plaintiff is only
10 required to provide notice of his claim through “a short and plain statement.” Fed. R. Civ. P.
11 8(a). By inundating the court with evidence/exhibits at this stage in the proceedings, plaintiff
12 only burdens the court, confuses the record, and delays his lawsuit. If this action proceeds to a
13 point where submission of evidence is appropriate, for example, summary judgment or trial,
14 plaintiff will have the opportunity to submit necessary evidence. But in amending his complaint,
15 plaintiff should simply state the facts upon which he alleges a defendant has violated his
16 constitutional rights and refrain from submitting exhibits. Plaintiff will be granted another thirty
17 days within which to file an amended complaint in accordance with the court’s initial screening
18 order. *See* ECF No. 9.

19 Plaintiff also filed a “motion for relief or new trial,” stating that he is serving a life
20 sentence that was “wrongfully imposed.” ECF No. 16. To the extent plaintiff is challenging the
21 fact or duration of his custody or seeking to vacate his judgment of conviction, he must proceed
22 through a petition for a writ of habeas corpus. *See Nettles v. Grounds*, ___ F.3d ___, 2016 U.S.
23 App. LEXIS 13573 * 20, 2016 WL 3997255 (9th Cir. 2016). Accordingly, the “motion for relief
24 or new trial” is denied.

25
26 ¹ Plaintiff also filed an “amended complaint” on September 21, 2016. ECF No. 14. It is
27 not clear whether plaintiff wants to proceed with this pleading, or if he is asking for an extension
28 of time to file a second amended complaint. If plaintiff does not file a second amended complaint
as herein permitted, the court will screen the first amended complaint filed on September 21,
2016, pursuant to 28 U.S.C. § 1915A.

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's objection to the court's order requiring his payment of the filing fee (ECF No. 12) is overruled.
2. Plaintiff's request for an extension of time (ECF Nos. 13 & 15) is granted. Within 30 days, plaintiff may file a second amended complaint in accordance with the court's August 18, 2016 order (ECF No. 9).
3. Plaintiff's "motion for relief or new trial" (ECF No. 16) is denied.

DATED: October 20, 2016.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE