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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS DAVIS,  
Plaintiff,  
v.  
B. JOHNSON, et al.,  
Defendants.

No. 2:17-cv-0544 JAM CKD P

ORDER

Plaintiff is a California prisoner proceeding pro se and in forma pauperis with an action for violation of civil rights pursuant to 42 U.S.C. §1983. On June 28, 2018, plaintiff filed a motion for leave to file an amended complaint. Plaintiff seeks to add a claim arising under the Fourteenth Amendment. For two primary reasons, the motion will be denied.

First, the complaint is merely a supplemental complaint (plaintiff does not include the Eighth Amendment claim upon which this action is now proceeding) which, under Local Rule 220, the court does not permit.

Second, plaintiff’s Fourteenth Amendment claim is not a claim upon which relief can be granted. Plaintiff alleges that personal animus caused defendants he identifies as “housing unit officers” to house plaintiff on an upper tier, forcing plaintiff, who is mobility impaired, to climb stairs. “Housing unit officers” are not identifiable people who can be served with process. Further, as has already been explained to plaintiff in the court’s April 18, 2018 findings and

1 recommendations, plaintiff's recourse for being housed under dangerous conditions lies under the  
2 Eighth Amendment, and not the Due Process Clause. To the extent plaintiff attempts to assert a  
3 violation of the "Equal Protection Clause" of the Fourteenth Amendment, plaintiff fails to allege  
4 intentional or purposeful discrimination (unequal treatment of different categories of people on  
5 the basis of things such as race or religious beliefs). This requirement was also explained to  
6 plaintiff in the court's April 18, 2018 findings and recommendations.

7 In light of the foregoing, plaintiff's motion for leave to amend will be denied and his  
8 amended complaint stricken. Plaintiff has also filed a motion asking that this action be stayed  
9 pending resolution of plaintiff's motion for leave to amend. That motion will be denied as moot.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Plaintiff's motion for leave to file an amended complaint (ECF No. 33) is denied;
- 12 2. Plaintiff's amended complaint (ECF No. 34) is stricken; and
- 13 3. Plaintiff's motion for a stay (ECF No. 38) is denied.

14 Dated: October 26, 2018

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17 CAROLYN K. DELANEY  
18 UNITED STATES MAGISTRATE JUDGE

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