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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTONIO CARREON,
Plaintiff,
v.
S. ABDUR-RAHMAN, et al.,
Defendants.

No. 2:17-cv-1292 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel and in forma pauperis. On September 28, 2018, defendants’ motion to dismiss was granted in part and denied in part. Plaintiff was granted leave to amend to attempt to state a retaliation claim, or he could choose to proceed on his original complaint based solely on his eighth Amendment deliberate indifference claims. On September 18, 2018, plaintiff filed an amended complaint raising only his deliberate indifference claims, but asking the court to incorporate his entire original complaint, including its exhibits, in to his amended complaint. Plaintiff makes clear his intention to abandon his retaliation claim against defendant Abdur-Rahman; indeed, he requests to proceed on his original complaint based solely on his Eighth Amendment deliberate indifference claims as to both defendants. (ECF No. 28.)

Plaintiff’s amended complaint fails to allege the specific facts contained in his original complaint, particularly in connection with defendant Lee. But in light of plaintiff’s clear


1 intention to proceed with his Eighth Amendment claims set forth in the original complaint, which
2 the undersigned previously found stated potentially cognizable claims, the undersigned will not
3 require plaintiff to amend again. Rather, the undersigned strikes plaintiff's amended complaint,
4 and finds that this action proceeds on plaintiff's original complaint solely as to plaintiff's Eighth
5 Amendment claims against defendants S. Abdur-Rahman and B. Lee.

6 As previously found, the original complaint states potentially cognizable Eighth
7 Amendment claims for relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the
8 allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the
9 merits of this action.

10 In accordance with the above, IT IS HEREBY ORDERED that:

- 11 1. The Clerk of the Court is directed to strike plaintiff's amended complaint (ECF No.
12 28);
- 13 2. This action shall proceed on plaintiff's original complaint; and
- 14 3. Defendants S. Abdur-Rahman and B. Lee shall file a responsive pleading within thirty
15 days from the date of this order.

16 Dated: October 16, 2018

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

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