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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ALLEN,
Plaintiff,

No. C 16-1056 WHA (PR)

ORDER ON PENDING MOTIONS

v.

H. CLEMENTE, J. BERRELLEZA, R.
FERNANDEZ,

(Dkt. No. 42, 46, 49, 53)

Defendants.
_____ /

Pursuant to the stipulation filed by the parties, the claims against defendant R. Fernandez are **DISMISSED** with prejudice. Fernandez's motions for summary judgment and for an extension of time (ECF Nos. 42, 46) are **DENIED**. Plaintiff's motion for an extension of time (ECF No. 51) to oppose the motion for summary judgment of defendants Clemente and Berreleza is **GRANTED** to and including **May 19, 2017**.

Defendants' motion to strike plaintiff's first amended complaint (ECF No. 53) is **DENIED**. First, plaintiff's failure to obtain leave to file the amended complaint is excused based upon his pro se and incarcerated status. *See* Fed. R. Civ. P. 15(a). Prejudice to defendants Clemente and Berrelleza is negated by the fact that the amended complaint makes no new allegations against them. Rather, the amended complaint simply adds a new defendant — Correctional Officer Vasques — and alleges that he did the same thing as defendants Berrelleza and Clemente. Thus, Vasques is similarly situated to defendants Berrelleza and Clemente with

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respect to liability on plaintiff's claims. The pending summary judgment motion by Berrelleza and Clemente is construed as pertaining to the first amended complaint, and following ruling on that motion, defendant Vasques will be ordered served, if necessary.

IT IS SO ORDERED.

Dated: May 11, 2017.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE