

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

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2
3 TOMAS LOPEZ MENEWEATHER)

No. C 07-04204 SBA (PR)

4 Plaintiff,)

ORDER GRANTING MOTION TO

AMEND COMPLAINT TO ADD

SUPERVISORY LIABILITY CLAIMS

AND DISMISSING SUPERVISORY

LIABILITY CLAIMS WITH LEAVE TO

AMEND

5 v.)

6 B. POWELL, et al.,)

7 Defendants.)

(Docket no. 12)

8
9 Plaintiff Tomas Lopez Meneweather, a state prisoner currently incarcerated at Salinas Valley
10 State Prison (SVSP), filed the present pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging
11 a constitutional rights violation while incarcerated at SVSP. Plaintiff filed an amended complaint
12 raising the same Eighth Amendment claim from his original complaint. On October 2, 2008, the
13 Court issued an Order of Service.

14 Before the Court is Plaintiff's Motion to Amend the Complaint to Include Defendants K.
15 Nuckles, R. Boccella and G. Neotti (docket no. 12). Upon reviewing Plaintiff's motion, the Court
16 construes his motion as a request to file an amendment to the complaint.

17 A plaintiff may amend his complaint once as a matter of course at any time before a
18 responsive pleading is served. See Fed. R. Civ. P. 15(a). Where a plaintiff seeks to amend after a
19 responsive pleading has already been served, however, the decision whether to grant leave to amend
20 is committed to the sound discretion of the trial court. Waits v. Weller, 653 F.2d 1288, 1290 (9th
21 Cir. 1981). Federal Rule of Civil Procedure 15(a) is to be applied liberally in favor of amendments
22 and, in general, leave shall be freely given when justice so requires. Janicki Logging Co. v. Mateer,
23 42 F.3d 561, 566 (9th Cir. 1994).

24 The Court notes that while an order of service has been issued, Defendants in this action have
25 not filed an answer at this time. Plaintiff may as a matter of course amend his complaint because a
26 responsive pleading has not yet been served. See Fed. R. Civ. P. 15(a). While Plaintiff has
27 previously filed an Amended Complaint, the Court finds that it is in the interests of justice to allow
28 Plaintiff filed the aforementioned amendment to the complaint. See Janicki Logging Co., 42 F.3d at
566. Accordingly, Plaintiff's motion for leave to file an amendment to the complaint (docket no. 12)

United States District Court
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1 is GRANTED.

2 The Court has reviewed Plaintiff's amendment to the complaint and construes his allegations
3 asserted against the proposed additional Defendants -- SVSP Sergeant K. Nuckles, SVSP Lieutenant
4 R. Boccella and SVSP Associate Warden G. Neotti -- as supervisory liability claims. However, for
5 the aforementioned Defendants to be liable as supervisors, Plaintiff must allege that they
6 "participated in or directed the violations, or knew of the violations and failed to act to prevent
7 them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). He has not made such a claim.
8 Accordingly, Plaintiff's supervisory liability claims against Defendants Nuckles, Boccella and Neotti
9 are dismissed with leave to amend.

10 CONCLUSION

11 For the foregoing reasons, the Court orders as follows:

12 1. Plaintiff's motion for leave to file an amendment to the complaint (docket no. 12) is
13 GRANTED. The Clerk of the Court is directed to file Plaintiff's motion, which is labeled "Motion to
14 Amend the Complaint to Include Defendants K. Nuckles, R. Boccella and G. Neotti," and docket the
15 aforementioned document as Plaintiff's "Amendment to the Complaint." The Clerk of Court is further
16 directed to mark the Amendment to the Complaint as filed on November 25, 2008, the date it was
17 received by the Court.

18 2. Plaintiff's supervisory liability claims against Defendants Nuckles, Boccella and Neotti
19 are DISMISSED with leave to amend as indicated above. Within **thirty (30) days** of the date of this
20 Order Plaintiff may file an amended supervisory liability claim against Defendants Nuckles, Boccella
21 and Neotti (Plaintiff shall resubmit only those claims and not the entire complaint) as set forth above.
22 He must clearly label the document his "Second Amendment to the Complaint," and write in the case
23 number for this action. The failure to do so within the thirty-day deadline will result in the dismissal
24 of Plaintiff's supervisory liability claim against Defendants Nuckles, Boccella and Neotti.

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26 3. This Order terminates Docket no. 12.

27 IT IS SO ORDERED.

28 DATED: 12/8/08


SAUNDRA BROWN ARMSTRONG

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United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

TOMAS L MENEWEATHER,

Plaintiff,

v.

B POWELL et al,

Defendant.

Case Number: CV07-04204 SBA

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 11, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Tomas Lopez Meneweather D35219
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: December 11, 2008

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk