

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

3
4 DEMETRIUS A. WRIGHT,
5 Plaintiff,
6 v.
7 A. HEDGPETH, et al.,
8 Defendants.

No. C 09-04358 CW (PR)

ORDER DIRECTING CLERK TO FILE
AND SERVE SECOND AMENDED
COMPLAINT, DENYING DISCOVERY
MOTIONS WITHOUT PREJUDICE,
DENYING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT WITHOUT
PREJUDICE

9 _____/
10 Plaintiff Demetrius A. Wright, a state prisoner incarcerated
11 at Salinas Valley State Prison (SVSP), filed the above-titled pro
12 se civil rights action pursuant to 42 U.S.C. § 1983 claiming the
13 violation of his First Amendment rights. Defendants have filed a
14 motion for summary judgment with respect to the claims raised in
15 Plaintiff's first amended complaint (FAC).

16 Now pending before the Court are Plaintiff's motions (1) to
17 file a second amended complaint (SAC), (2) to quash Defendants'
18 subpoena seeking access to Plaintiff's central file, (3) to compel
19 discovery, and (4) for an extension of time to oppose Defendants'
20 motion for summary judgment.

21 A. Second Amended Complaint

22 Plaintiff asks for leave to file a SAC on the following
23 grounds:

24 (1) Plaintiff has discovered the identity of the John Doe
25 Defendant named in count 1 of the FAC. The Court had dismissed
26 this claim without prejudice to Plaintiff's moving to amend the FAC
27 should he discover the Doe Defendant's identity. Plaintiff
28 identifies the Defendant in claim 1 as "Jewish Chaplain Friedman."

1 (2) Plaintiff realleges his claims against Defendants G.D.
2 Lewis and N. Grannis, whom Plaintiff previously named in claim 1 of
3 the FAC. Plaintiff states that, although the Court found the claim
4 cognizable, it dismissed the claim against Defendants Lewis and
5 Grannis and failed to order the FAC served on them.

6 (3) Plaintiff clarifies that Defendant A. Landou, whom the
7 Court identified in the Order of Service as a Correctional
8 Sergeant, is an Islamic Chaplain.

9 (4) Plaintiff realleges his claim against Defendants D.
10 Galloway, R. Mantel and D. Binkele, against whom the Court
11 previously dismissed Plaintiff's claim 3 in the FAC. Plaintiff
12 states that these Defendants were not named in claim 3 but,
13 instead, were named in claim 2, which the Court found cognizable.

14 (5) The Court previously found not cognizable Plaintiff's
15 claim 3, alleging that his constitutional rights had been violated
16 by the mishandling of his Qu'ran and the search of his person by
17 Defendant Newby. Plaintiff now seeks to amend claim 3 by alleging
18 that the actions complained of were part of a pattern of conduct.
19 Plaintiff states this claim can be added to the SAC because he
20 exhausted his administrative remedies with respect thereto since
21 filing the FAC.

22 The Court GRANTS Plaintiff leave to file a SAC that includes
23 the allegations set forth at paragraphs 1 through 4 above. The
24 Court allows Plaintiff to reallege claim 1 against Defendants Lewis
25 and Grannis, to reallege claim 2 against Defendants Galloway,
26 Mantel and Binkele and orders the SAC served on all unserved
27 Defendants.

28

1 Leave to amend to reallege claim 3, as discussed at paragraph
2 5 above, is DENIED. Plaintiff cannot now add to this action claims
3 that were not exhausted when the action was filed originally. See
4 McKinney v. Carey, 311 F.3d 1198, 1199-1201 (9th Cir. 2002).

5 B. Discovery and Briefing Matters

6 Plaintiff filed a motion to quash a subpoena issued by
7 Defendants to view the entirety of Plaintiff's central prison file,
8 and for a protective order to prevent the production of any
9 information in his central file not relevant to the instant action.
10 More recently, Plaintiff filed a motion to compel discovery
11 responses from Defendants. Defendants have not responded to either
12 of Plaintiff's motions.

13 Plaintiff also has filed a motion for an extension of time to
14 oppose Defendants' motion for summary judgment.

15 In view of the Court's decision that five Defendants not
16 previously served must be served with the SAC and respond to the
17 same claims that are addressed in Defendants' pending motion for
18 summary judgment, the Court finds it premature to address
19 Plaintiff's discovery-related motions or to order further briefing
20 on Defendants' motion for summary judgment.

21 Accordingly, Plaintiff's discovery motions and Defendants'
22 motion for summary judgment are hereby DENIED without prejudice,
23 and Plaintiff's request for an extension of time to oppose the
24 motion for summary judgment is DENIED as moot. The parties may
25 file renewed motions once all Defendants have been served and the
26 parties have had the opportunity to engage in further discovery.

27 //

28 //

CONCLUSION

For the foregoing reasons, the Court orders as follows:

1. Plaintiff's motion for leave to file a SAC is GRANTED.

The Clerk of the Court shall file the proposed SAC that was docketed as "received" on May 17, 2010 (docket no. 11).

2. Plaintiff's motions to quash and to compel discovery are DENIED without prejudice.

3. Plaintiff's motion for an extension of time to oppose Defendants' motion for summary judgment is DENIED as moot.

4. Defendants' motion for summary judgment is DENIED without prejudice.

5. The portion of the Court's Order of Service dismissing claims against Defendants D. Galloway, R. Mantel, D. Binkele, G.D. Lewis and N. Grannis is VACATED.

6. The Clerk shall mail a Notice of Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy of the SAC and all attachments thereto (docket no. 11) and a copy of this Order to the following (1) SVSP officials: Deputy Warden G.D. Lewis, Correctional Sergeant D. Galloway, Facility Captain R. Mantel, Facility Captain R. Binkele, and (2) N. Grannis, Chief of the Inmate Appeals Branch for the California Department of Corrections and Rehabilitation in Sacramento.

The Clerk shall also serve a copy of the SAC on Defendants' counsel Jesse Manuel Rivera at the address on the Court's docket.

7. Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure requires Defendants to cooperate in saving unnecessary costs of service of the summons and amended complaint.

1 Pursuant to Rule 4, if Defendants, after being notified of this
2 action and asked by the Court, on behalf of Plaintiff, to waive
3 service of the summons, fails to do so, Defendants will be required
4 to bear the cost of such service unless good cause be shown for
5 their failure to sign and return the waiver form. If service is
6 waived, this action will proceed as if Defendants had been served
7 on the date that the waiver is filed, except that pursuant to Rule
8 12(a)(1)(B), Defendants will not be required to serve and file an
9 answer before sixty (60) days from the date on which the request
10 for waiver was sent. (This allows a longer time to respond than
11 would be required if formal service of summons is necessary.)
12 Defendants are asked to read the statement set forth at the foot of
13 the waiver form that more completely describes the duties of the
14 parties with regard to waiver of service of the summons. If
15 service is waived after the date provided in the Notice but before
16 Defendants have been personally served, the Answer shall be due
17 sixty (60) days from the date on which the request for waiver was
18 sent or twenty (20) days from the date the waiver form is filed,
19 whichever is later.

20 8. Defendants shall answer the SAC in accordance with the
21 Federal Rules of Civil Procedure. The following briefing schedule
22 shall govern dispositive motions in this action:

23 a. No later than ninety (90) days from the date
24 Defendants' answer is due, Defendants shall file a motion for
25 summary judgment or other dispositive motion. The motion shall be
26 supported by adequate factual documentation and shall conform in
27 all respects to Federal Rule of Civil Procedure 56. If Defendants
28 are of the opinion that this case cannot be resolved by summary

1 judgment, Defendants shall so inform the Court prior to the date
2 the summary judgment motion is due. All papers filed with the
3 Court shall be promptly served on Plaintiff.

4 b. Plaintiff's opposition to the dispositive motion
5 shall be filed with the Court and served on Defendants no later
6 than sixty (60) days after the date on which Defendants' motion is
7 filed. The Ninth Circuit has held that the following notice should
8 be given to pro se plaintiffs facing a summary judgment motion:

9 The defendant has made a motion for summary
10 judgment by which they seek to have your case dismissed.
11 A motion for summary judgment under Rule 56 of the
Federal Rules of Civil Procedure will, if granted, end
your case.

12 Rule 56 tells you what you must do in order to
13 oppose a motion for summary judgment. Generally, summary
14 judgment must be granted when there is no genuine issue
15 of material fact -- that is, if there is no real dispute
16 about any fact that would affect the result of your case,
17 the party who asked for summary judgment is entitled to
18 judgment as a matter of law, which will end your case.
19 When a party you are suing makes a motion for summary
20 judgment that is properly supported by declarations (or
21 other sworn testimony), you cannot simply rely on what
22 your complaint says. Instead, you must set out specific
facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided
in Rule 56(e), that contradict the facts shown in the
defendant's declarations and documents and show that
there is a genuine issue of material fact for trial. If
you do not submit your own evidence in opposition,
summary judgment, if appropriate, may be entered against
you. If summary judgment is granted [in favor of the
defendants], your case will be dismissed and there will
be no trial.

23 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en
24 banc).

25 Plaintiff is advised to read Rule 56 of the Federal Rules of
26 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
27 (party opposing summary judgment must come forward with evidence
28 showing triable issues of material fact on every essential element

1 of his claim). Plaintiff is cautioned that because he bears the
2 burden of proving his allegations in this case, he must be prepared
3 to produce evidence in support of those allegations when he files
4 his opposition to Defendants' dispositive motion. Such evidence
5 may include sworn declarations from himself and other witnesses to
6 the incident, and copies of documents authenticated by sworn
7 declaration. Plaintiff will not be able to avoid summary judgment
8 simply by repeating the allegations of his amended complaint.

9 c. If Defendants wish to file a reply brief, Defendants
10 shall do so no later than thirty (30) days after the date
11 Plaintiff's opposition is filed.

12 d. The motion shall be deemed submitted as of the date
13 the reply brief is due. No hearing will be held on the motion
14 unless the Court so orders at a later date.

15 9. Discovery may be taken in this action in accordance with
16 the Federal Rules of Civil Procedure. Leave of the Court pursuant
17 to Rule 30(a)(2) is hereby granted to Defendants to depose
18 Plaintiff and any other necessary witnesses confined in prison.

19 10. All communications by Plaintiff with the Court must be
20 served on Defendants, or Defendants' counsel once counsel has been
21 designated, by mailing a true copy of the document to Defendants or
22 Defendants' counsel.

23 11. It is Plaintiff's responsibility to prosecute this case.
24 Plaintiff must keep the Court informed of any change of address and
25 must comply with the Court's orders in a timely fashion.

26 12. Extensions of time are not favored, though reasonable
27 extensions will be granted. Any motion for an extension of time
28 must be filed no later than fifteen (15) days prior to the deadline

1 sought to be extended.

2 This Order terminates Docket nos. 21, 27, 28, 30 and 31.

3 IT IS SO ORDERED.

4 DATED: 8/11/2011



CLAUDIA WILKEN
United States District Judge

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 DEMETRIUS A. WRIGHT,

5 Plaintiff,

6 v.

7 A. HEDGEPATH et al,

8 Defendant.

Case Number: CV09-04358 CW

CERTIFICATE OF SERVICE

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

11 That on August 11, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Demetrius Ahmed Wright T65802
16 Salinas Valley State Prison
17 P.O. Box 1050
18 Soledad, CA 93960

19 Dated: August 11, 2011

20 Richard W. Wieking, Clerk
21 By: Nikki Riley, Deputy Clerk
22
23
24
25
26
27
28