

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

LAFONZO R. TURNER, No. C 10-05492 CW (PR)
Plaintiff, ORDER OF DISMISSAL
v.
MARTINEZ POLICE DEPARTMENT,
Defendant.

This action was opened in error when the Court received a civil rights complaint form from Plaintiff that was intended to be filed in a previously-filed action -- Case No. C 10-0897 CW (PR). On May 10, 2010, the Court dismissed the amended complaint in Case No. C 10-0897 CW (PR) because Plaintiff had not exhausted his administrative remedies. The Court noted, "At the time, Plaintiff conceded that he had not exhausted his administrative remedies because he 'was convicted on other charges and sent to prison.'" (May 10, 2010 Order in Case No. C 10-0897 CW (PR) at 2.) On September 2, 2010, the Court granted Plaintiff's motion for reconsideration of the Court's May 10, 2010 Order in Case No. C 10-0897 CW (PR) upon determining that he "substantially complied with the jail's grievance procedure" and that his allegations in his motion for reconsideration were "sufficient to defeat dismissal for failure to exhaust." (Sept. 2, 2010 Order in Case No. C 10-0897 CW (PR) at 3.) The Court reviewed Plaintiff's amended complaint in Case No. C 10-0897 CW (PR), and dismissed it with leave to amend to correct pleading deficiencies. The Court directed Plaintiff to

United States District Court
For the Northern District of California

1
2
3
4
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 file a "proposed second amended complaint" within ninety days, and
2 stated:

3 Plaintiff shall file his proposed second amended
4 complaint. If Plaintiff does so and the Court finds
5 that he has corrected the deficiencies of his amended
6 complaint, the Court will reopen the action and allow
7 Plaintiff to proceed with his second amended complaint.
8 If Plaintiff does not file a proposed second amended
9 complaint or if he fails to correct the deficiencies of
10 his amended complaint, the action will not be reopened.

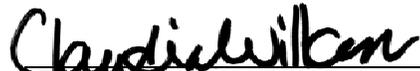
11 (Id. at 8-9.) On December 3, 2010, Plaintiff completed and filed a
12 civil rights complaint form; however, he did not indicate that it
13 was to be filed as the proposed second amended complaint in Case
14 No. C 10-0897 CW (PR). Therefore, as mentioned above, it was
15 opened as a new action.

16 Plaintiff currently has two separate civil rights actions
17 pending, although he meant to file only one action. Accordingly,
18 the Clerk is directed to remove Plaintiff's civil rights complaint
19 form from this action, to file it in his previously-filed action,
20 Case No. C 10-0897 CW (PR), and to docket it as Plaintiff's "Second
21 Amended Complaint." The Clerk is further directed to mark it as
22 filed on December 3, 2010, the date it was received by the Court.
23 The Court will review Plaintiff's "Second Amended Complaint" in a
24 separate written Order in Case No. C 10-0897 CW (PR).

25 The present action is DISMISSED because it was opened in
26 error. No filing fee is due. The Clerk shall close the file.

27 IT IS SO ORDERED.

28 Dated: 2/10/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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

4 LAFONZO R TURNER,

5 Plaintiff,

6 v.

7 MARTINEZ POLICE DEPT et al,

8 Defendant.

Case Number: CV10-05492 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 February 10, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
12 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
13 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
14 delivery receptacle located in the Clerk's office.

15 Lafonzo R. Turner G-05794
16 P.O. Box 2430
17 Lancaster, CA 93539

Dated: February 10, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk