

1 United States District Court
2 Northern District of California

3 PAUL SAMUEL JOHNSON,
4 Plaintiff,
5 v.
6 LIEUTENANT TOBY, et al.,
7 Defendants.
8

Case No.: C 11-01975 CW (PR)
ORDER OF DISMISSAL AND DENYING
REQUEST FOR EXTENSION OF TIME
(Docket no. 46)

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10 On April 22, 2011, Plaintiff filed the present pro se civil
11 rights action under 42 U.S.C. § 1983 when he was incarcerated at
12 the California State Prison - Solano (CSP-Solano). He complains
13 about the conditions of his confinement during a period of
14 incarceration at the Sonoma County Jail (SCJ) in 2009. He has
15 been granted leave to proceed in forma pauperis.

16 The Court conducted an initial review of the allegations in
17 the complaint pursuant to 28 U.S.C. § 1915 and found the
18 complaint failed to state a claim upon which relief may be
19 granted, for the following reasons:

20 Plaintiff's claims cannot proceed as plead because
21 Plaintiff has not clearly and concisely set forth his
22 claims against Defendants or directly linked Defendants
23 to his allegations. In particular, Plaintiff has not
24 specified the correctional officers who were involved
25 in the September 11, 2009, cell extraction or the
26 supervising officers who "turned a blind eye" to the
27 methods employed in that extraction. He has not
28 described in any detail nor linked any of the
Defendants to the yard counseling schemes. He does not
describe with particularity the injuries which were
caused or worsened by SCJ medical personnel's alleged
failure to treat him. He does not identify the
policies employed by the institutional Defendants that
allegedly violate his constitutional rights.

Docket no. 34 at 4:5-17.

1 Additionally, the Court found that "Plaintiff's pleadings
2 are also deficient in that they fail to include information
3 sufficient for the Court to determine whether his various claims
4 are related. It is not clear whether his complaint regarding
5 lack of medical care is related by anything other than
6 chronological proximity to the cell extraction." Id. at 4:18-22.

7 Consequently, the Court dismissed the complaint with leave
8 to amend, as follows:

9 Plaintiff may file an amended complaint in which he
10 (1) alleges facts sufficient for the Court to determine
11 whether he states a claim for the violation of his
12 constitutional rights, (2) clearly links each Defendant
13 to the alleged injury or injuries for which that
14 Defendant is alleged to be responsible, (3) does not
15 raise unrelated claims against different Defendants,
16 and (4) clearly specifies the relief he requests for
17 each alleged injury and links that relief to a
18 particular Defendant or Defendants.

19 Id. at 5:23-6:3.

20 Subsequently, on June 8, 2012, Plaintiff filed an amended
21 complaint; he also informed the Court that he had been released
22 from prison. Docket nos. 36, 37. In the amended complaint, he
23 did not name any Defendants and stated that he did not know the
24 names of the individuals responsible for his injuries. He
25 alleged that unnamed correctional officers at SCJ captured on
26 videotape the use of excessive force against him, but, because of
27 his incarceration at CSP-Solano, he had been unable to obtain the
28 names of the officers or the videotape, and also had been unable
to obtain the names of the jail officials who failed to provide
him with adequate medical care. He asked the Court to provide
him with subpoenas so he could discover the Defendants'

1 identities and amend his complaint at a later date. Shortly
2 thereafter, Plaintiff notified the Court that he had been
3 returned to SCJ. Docket no. 40.

4 On August 7, 2012, the Court issued an order finding that
5 "[b]ecause Plaintiff now is incarcerated at the same jail where
6 the alleged Defendants are employed, his incarceration at CSP-
7 Solano no longer limits his ability to discover their identities.
8 Accordingly, Plaintiff's request for subpoenas is DENIED without
9 prejudice." Docket no. 43 at 3:12-16. Additionally, in that
10 same order, the Court granted Plaintiff leave to file a second
11 amended complaint that adequately names and links Defendants to
12 his claims, and informed him that "[h]is failure to timely file
13 an amended complaint within twenty-eight days will result in the
14 dismissal of this action without prejudice." Id. at 19-21.

15 Fifty-two days later, on October 1, 2012, Plaintiff, who by
16 then was incarcerated at the Martinez Detention Facility,
17 requested an extension of time to file his second amended
18 complaint because he had not been able to obtain the information
19 necessary to amend. On October 19, 2012, Plaintiff notified the
20 Court that he had been released from custody and now resides in
21 Rohnert Park. Since then, Plaintiff has not filed a second
22 amended complaint or otherwise communicated with the Court.

23 This action has been pending for nineteen months. Plaintiff
24 has been given two opportunities to correct pleading deficiencies
25 but has failed to do so, claiming that he has been unable to
26 access the pertinent information due to his incarceration at CSP-
27 Solano and the Martinez Detention Facility. During the relevant
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time period, however, Plaintiff also was incarcerated at the SCJ, where the alleged events occurred, and was released from custody. Based on the above, the Court finds that Plaintiff has been given every opportunity to obtain the information he needs in order to correct the noted pleading deficiencies but has failed to do so in compliance with the Court's orders and in a timely manner.

Accordingly, Plaintiff's request for an extension of time to file his second amended complaint is DENIED, and this case is DISMISSED without prejudice to his filing a new action raising these same claims should he obtain the information necessary to state a claim upon which relief may be granted. Plaintiff, however, is cautioned that his claims will be subject to dismissal if they are time-barred.

The Clerk of the Court shall enter judgment and close the file.

This Order terminates Docket no. 46.

IT IS SO ORDERED.

Dated: 11/20/2012


CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE