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2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4

5 MARK ANTHONY CANDLER,
6

7 Plaintiff,

8 v.

9 SANTA RITA COUNTY JAIL WATCH
10 COMMANDER, et al.,

11 Defendants.

Case No.: C 11-1992 CW (PR)

ORDER DENYING WITHOUT PREJUDICE
PLAINTIFF'S MOTION TO AMEND
COMPLAINT AND DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT,
DENYING MOTION TO SUPPLEMENT
COMPLAINT, AND REFERRING
DISCOVERY DISPUTES TO
MAGISTRATE JUDGE

(Docket nos. 40, 41, 44, 45,
47)

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14 INTRODUCTION

15 Plaintiff, a state prisoner incarcerated at Pelican Bay
16 State Prison, filed this pro se civil rights action pursuant to
17 42 U.S.C. § 1983, complaining about his conditions of confinement
18 during the period of his incarceration as a pretrial detainee at
19 the Santa Rita County Jail (SRCJ). Specifically, Plaintiff
20 alleges that (1) from June 17, 2008 through December 13, 2010,
21 Defendants held him in disciplinary lock-up without disciplinary
22 charges or a hearing, and did not provide him with cleaning
23 materials for his cell or with the requisite minimum of three
24 hours of exercise a week, and (2) from March 2009 through
25 December 2010, he routinely went for more than seventy-two hours
26 without a shower. Plaintiff claims Defendants placed him in such
27 adverse conditions of confinement not because of his conduct but,
28 instead, in retaliation and at the request of the District

1 Attorney. He claims the violation of his right to due process
2 and that Defendants acted with deliberate indifference.

3 On May 13, 2013, the Court denied Defendants' first motion
4 for summary judgment without prejudice so that Plaintiff could
5 obtain necessary discovery. Doc. no. 36. The Court ordered that
6 all discovery be completed by August 1, 2013, that all discovery-
7 related motions be filed by August 15, 2013, and that Defendants
8 file their motion for summary judgment no later than September 1,
9 2013.

10 Thereafter, on August 19, 2013, Plaintiff filed two
11 discovery-related motions, doc. nos. 44 and 45, which Defendants
12 have opposed and, on August 30, 2013, Defendants filed their
13 motion for summary judgment, doc. no. 47. Also, in June 2013,
14 Plaintiff filed a motion for leave to amend his complaint, doc.
15 no. 40, and a motion to supplement his complaint, doc. no. 41.
16 For the reasons stated below, the Court denies the motion to
17 supplement the complaint, denies without prejudice the motions to
18 amend the complaint and the motion for summary judgment and
19 refers the discovery disputes to a Magistrate Judge.

20 DISCUSSION

21 I. Supplemental Complaint

22 Plaintiff moves to supplement his complaint to add events
23 that occurred in October 2012 when Plaintiff was transferred to
24 the SRCJ for a short period of time. Defendants oppose primarily
25 on the ground that they would be prejudiced by responding to
26 claims based on incidents that occurred two years after the
27 incidents upon which the original complaint is based.
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1 Federal Rule of Civil Procedure 15(d) permits "supplemental
2 pleadings setting forth transactions or occurrences or events
3 that have happened since the date of the pleading sought to be
4 supplemented." The purpose of Rule 15(d) is to promote as
5 complete an adjudication of the dispute between the parties as is
6 possible. LaSalvia v. United Dairymen of Ariz., 804 F.2d 1113,
7 1119 (9th Cir. 1986). "Rule 15(d) is intended to give district
8 courts broad discretion in allowing supplemental pleadings. The
9 rule is a tool of judicial economy and convenience." Keith v.
10 Volpe, 858 F.2d 467, 473 (9th Cir. 1988). "[A] supplemental
11 complaint should have some relation to the claim set forth in the
12 original pleading," and a court may deny leave to supplement a
13 complaint on grounds of undue delay, prejudice to the opposing
14 party, or futility. Id. at 474.

15 Because the events in the proposed supplemental pleading
16 occurred more than two years after the events alleged in
17 Plaintiff's amended complaint, responding to them at this time
18 would cause undue prejudice to Defendants. On the other hand,
19 Plaintiff will not be prejudiced by the denial of this motion
20 because he may file a new complaint based upon the later events.
21 Therefore, the motion to file a supplemental complaint is denied.

22 II. Amended Complaint

23 Plaintiff moves for leave to amend his complaint to add
24 Sergeant Scott M. Busby as a Defendant. Plaintiff indicates
25 that, in reviewing Defendants' motion for summary judgment, he
26 realized that Sgt. Busby was a member of the Classification Unit
27 which determined that Plaintiff should be housed in
28 Administrative Segregation without disciplinary charges or a

1 hearing and, thus, violated Plaintiff's rights to due process.

2 Defendants oppose the motion on the following grounds:

3 (1) Plaintiff failed to file a notice of motion as required by
4 Rule 7(b)(1) of the Federal Rule of Civil Procedure;

5 (2) Plaintiff failed to attach a copy of his proposed amended
6 complaint to his motion; and (3) Defendants will be prejudiced
7 because this case has been pending for more than two years,
8 discovery is scheduled to be closed shortly and Defendants have a
9 short time in which to file their summary judgment motion.

10 Defendants also argue that amendment would be futile because they
11 will prevail on their motion for summary judgment.

12 Federal Rule of Civil Procedure 15(a) provides that leave to
13 amend "shall be freely given when justice so requires." In
14 considering whether to grant or deny a motion seeking leave to
15 amend a complaint, the district court may consider whether there
16 is bad faith, undue delay, prejudice to the opposing party,
17 futility in the amendment, and whether the plaintiff has
18 previously amended his complaint. Allen v. City of Beverly
19 Hills, 911 F.2d 367, 373 (9th Cir. 1990). Civil Local Rule 10-1
20 provides that any party moving to file an amended pleading must
21 reproduce the entire proposed pleading and may not incorporate
22 any part of a prior pleading by reference.

23 Defendants cannot claim prejudice when one of the reasons
24 this case has been pending so long is their failure to provide
25 Plaintiff discovery. See May 13, 2013 Order Denying Summary
26 Judgment at 2-3. Also, the Court notes that, in Defendants'
27 renewed motion for summary judgment, they repeat the argument
28 from their previous motion, that Plaintiff is suing the wrong

1 Defendants because they did not cause the harm he alleges. In
2 discovery, it would be appropriate for Defendants to provide the
3 identity of the individuals who were responsible for the alleged
4 wrongful conduct. Because Defendants have not yet provided this
5 information to Plaintiff, they can hardly claim that they will be
6 prejudiced if Plaintiff is granted leave to amend to add the
7 proper Defendants. Also, Defendants' futility argument based on
8 their prediction that they will prevail on their motion for
9 summary judgment is premature.

10 Plaintiff has not included with his motion a proposed
11 amended complaint. Parties may not file piecemeal complaints or
12 amendments that contain portions of claims and less than all
13 defendants. Plaintiff's motion is denied for this reason.
14 However, denial is without prejudice to filing another motion
15 submitted with a proposed amended complaint. Because the
16 discovery disputes are referred to a Magistrate Judge, Plaintiff
17 may wait until the resolution of these disputes to file a new
18 motion to amend.

19 III. Discovery Disputes

20 On August 19, 2013, Plaintiff filed two discovery motions
21 which Defendants have opposed. Pursuant to Civil Local Rule 72-
22 1, Plaintiff's pending discovery motions and all further
23 discovery motions filed in this case are referred to a Magistrate
24 Judge to be considered at the convenience of the assigned
25 Magistrate Judge.

26 In light of this referral, the discovery cut-off date in
27 this case is vacated and Defendants' motion for summary judgment
28

1 is denied without prejudice to refile after the resolution of
2 the discovery disputes.

3 CONCLUSION

4 For the reasons stated above, the Court orders as follows:

5 1. Plaintiff's motion to file an amended complaint is
6 DENIED without prejudice. Docket no. 40.

7 2. Plaintiff's motion to file a supplemental complaint is
8 DENIED with prejudice. Docket no. 40.

9 3. Defendants' motion for summary judgment is denied without
10 prejudice. Docket no. 47.

11 4. Plaintiff's motions for discovery are referred to a
12 Magistrate Judge. Docket nos. 44, 45. The parties are to inform
13 the Court when the discovery disputes are resolved.

14 5. As indicated above, Plaintiff may wait until the
15 resolution of the discovery disputes to file an amended complaint
16 to name the proper Defendants. However, he must do so within
17 twenty-one days after the resolution of the disputes. If
18 Plaintiff decides to file a renewed motion to amend his
19 complaint, at the same time he must also submit the proposed
20 second amended complaint (SAC), on the Court's civil complaint
21 form. The SAC must include the caption of this case and the case
22 number, 11-1992 CW (PR), and the words "Second Amended Complaint"
23 on the first page. Plaintiff is advised that an amended
24 complaint supersedes the original complaint. "[A] plaintiff
25 waives all causes of action alleged in the original complaint
26 which are not alleged in the amended complaint." London v.
27 Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981). Defendants
28 not named in an amended complaint are no longer defendants. See

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Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

6. If Plaintiff does not file a SAC within twenty-one days after the resolution of the discovery disputes, his case will go forward on the basis of his First Amended Complaint (FAC). If the FAC remains the operative complaint, Defendants may refile their present motion for summary judgment.

This Order terminates Docket nos. 40, 41 and 47.

IT IS SO ORDERED.

Dated: 10/9/2013


CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE