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**United States District Court**  
For the Northern District of California

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FREDERICK WAYNE SMITH,	)	No. C 06-00103 JF (PR)
Plaintiff,	)	ORDER OF CLARIFICATION
vs.	)	
JOANNE WOODFORD, et al.,	)	
Defendant(s).	)	
	)	

On February 19, 2009, the Court partially granted Defendants’ motion to dismiss claims for failure to exhaust administrative remedies, and ordered Defendants to file a dispositive motion on the exhausted claim that Defendants acted with deliberate indifference to Plaintiff’s medical needs by failing to provide Plaintiff with a proper diet to meet his needs as a diabetic and Hepatitis C Virus patient. (Docket No. 58.) In the same order, the Court dismissed with leave to amend the following claims: 1) Defendants violated Plaintiff’s right to access to courts by confiscating his legal property; 2) Defendants violated the Free Exercise Clause by confiscating Plaintiff’s religious books; and 3) Defendants Woodford, Kirkland and Winslow are liable as

1 supervisors for their personal involvement in the unlawful acts of their subordinates.

2 An amended complaint supersedes the original complaint, such that “plaintiff  
3 waives all causes of action alleged in the original complaint which are not alleged in the  
4 amended complaint.” London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.  
5 1981). Furthermore, defendants not named in an amended complaint are no longer  
6 defendants. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.1992). Accordingly,  
7 Plaintiff is instructed to include in his amended complaint the exhausted medical claim,  
8 *i.e.*, that Defendants acted with deliberate indifference to Plaintiff’s medical needs by  
9 failing to provide Plaintiff with a proper diet to meet his needs as a diabetic and  
10 Hepatitis C Virus patient, in addition to the claims that were dismissed with leave to  
11 amend as mentioned above.

12 Plaintiff shall file an AMENDED COMPLAINT within **thirty (30) days** from  
13 the date this order of clarification is filed. The amended complaint must include the  
14 caption and civil case number used in this order (06-00103 JF (PR)) and the words  
15 AMENDED COMPLAINT on the first page. Plaintiff may not incorporate material  
16 from the prior complaint by reference. Plaintiff may not allege any claims beyond the  
17 three listed above. **Failure to file an amended complaint in accordance with this**  
18 **order will result in dismissal of these claims.**

19 No later than **sixty (60) days** from the date they are served with Plaintiff’s  
20 amended complaint, Defendants shall file a motion for summary judgment or other  
21 dispositive motion with respect to the claims in the amended complaint. Briefing shall  
22 proceed thereafter in accordance with the Court order filed February 19, 2009. (See  
23 Docket No. 58.)

24 IT IS SO ORDERED.

25 DATED: 2/24/09

26   
27 JEREMY FOGEL  
28 United States District Judge