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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GARY MINOR,
Plaintiff,
v.
FEDEX OFFICE & PRINT SERVICES,
INC., et al.,
Defendants.

Case No. 16-CV-00532-LHK

**ORDER DENYING AS MOOT MOTION
TO EXTEND TIME AND FEBRUARY 8,
2016 MOTIONS TO DISMISS**

Re: Dkt. Nos. 13, 15, 30

On December 29, 2015, pro se Plaintiff Gary Minor (“Plaintiff”) sued Defendants FedEx Office and Print Services, Inc. (“FedEx Office”), Federal Express Corporation (“Express”), Lance Freitas (“Freitas”), and Gallagher Bassett Services, Inc. (“Gallagher”) (collectively, “Defendants”). ECF No. 6. On February 8, 2016, FedEx Office, Freitas, and Express filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). ECF Nos. 13 (Motion of FedEx Office and Freitas), 15 (Motion of Express). On March 1, 2016, Plaintiff filed a First Amended Complaint. ECF No. 27. Before the Court is Plaintiff’s unopposed motion “requesting approval for missed deadline to file rely [sic],” which the Court interprets as a request to excuse the untimeliness of the First Amended Complaint. ECF No. 30. However, for the reasons stated

1 below, the Court finds that Plaintiff's First Amended Complaint is not untimely.

2 Plaintiff may amend the complaint once as a matter of course within "21 days after service
3 of a motion under Rule 12(b)." Fed. R. Civ. P. 15(a)(1)(B). Express served the motion to dismiss
4 by mail on February 8, 2016. ECF No. 13-1. FedEx Office and Freitas served their motion to
5 dismiss, also by mail, on February 9, 2016. ECF No. 19. Because service was made by mailing
6 the motions to dismiss to Plaintiff's last known address, the deadline to amend the pleadings is
7 extended by "3 days . . . after the period would otherwise expire." Fed. R. Civ. P. 6(d).
8 Accordingly, Plaintiff had 24 days from February 8, 2016, or until March 3, 2016, to amend the
9 pleadings in response to Express's motion to dismiss. Plaintiff had until March 4, 2016 to amend
10 the pleadings in response to FedEx Office's and Freitas's motion to dismiss. Plaintiff filed the
11 First Amended Complaint on March 1, 2016. Consequently, Plaintiff's First Amended Complaint
12 is timely and the Court DENIES as moot Plaintiff's motion to approve the filing of an untimely
13 First Amended Complaint.

14 Moreover, the Court DENIES as moot the February 8, 2016 motions to dismiss filed by
15 FedEx Office, Freitas, and Express. First, these motions to dismiss do not address the First
16 Amended Complaint. *See Lasher v. City of Santa Clara*, 2011 WL 1560662, at *2 (N.D. Cal. Apr.
17 25, 2011) (denying motion to dismiss as moot after amended complaint was filed). Second,
18 FedEx Office, Freitas, and Express have all filed new motions to dismiss in response to the First
19 Amended Complaint. ECF Nos. 33 (Motion of FedEx Office and Freitas); 38 (Motion of
20 Express). None of these motions claim that the First Amended Complaint is untimely.
21 Additionally, FedEx Office and Freitas expressly state that the "instant Motion to Dismiss replaces
22 Defendants' prior February 9, 2016 Motion to Dismiss." ECF No. 33 at 4 n.5.

23 The Court cautions Plaintiff that Plaintiff may not amend the complaint again as a matter
24 of right. *See Fed. R. Civ. P. 15*. The deadline for Plaintiff to oppose Gallagher's motion to
25 dismiss is March 25, 2016. The deadline for Plaintiff to oppose FedEx Office's and Freitas's
26 motion to dismiss is March 28, 2016. The deadline for Plaintiff to oppose Express's motion to
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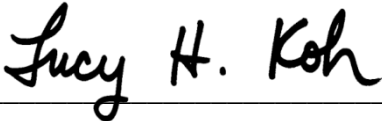
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dismiss is March 30, 2016.

Plaintiff is encouraged to continue seeking advice from the Federal Pro Se Program. Appointments may be made with the Federal Pro Se Program by calling (408) 297-1480, or by stopping by Room 2070 at the San Jose Courthouse, 280 South First Street, San Jose, CA 95113. For additional guidance in filing the oppositions, Plaintiff may access the Pro Se Handbook at <http://cand.uscourts.gov/prosehandbook>, and may access a sample opposition to a motion to dismiss at <http://cand.uscourts.gov/Legal-Help-Center-Templates>.

IT IS SO ORDERED.

Dated: March 18, 2016



LUCY H. KOH
United States District Judge