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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHNNY ANDREW MOORE,

Plaintiff,

v.

S. HATTON, et al.,

Defendants.

Case No. 20-01445 BLF (PR)

**ORDER *SUA SPONTE* GRANTING
EXTENSION OF TIME TO FILE
AMENDED COMPLAINT**

Plaintiff, a California inmate, filed a *pro se* complaint in Monterey County Superior Court, which Defendants removed to this Court under 28 U.S.C. §§ 1441(a), 1446(b). Dkt. No. 1. On July 7, 2020, the Court granted Defendants' request to screen the complaint, dismissed the Eighth Amendment deliberate indifference claim as barred by *res judicata*, and dismissed the First Amendment retaliation claim with leave to amend. Dkt. No. 7 at 3-4. Plaintiff was directed to file an amended complaint within twenty-eight days from the date the order was filed. *Id.* at 4. Plaintiff was also advised that in the alternative, he may file notice in the same time provided that he wishes to strike all the federal claims from this action and have the matter remanded back to state court to pursue the sole state law claim for intentional infliction of emotional distress. *Id.* at 5.

To date, Plaintiff has filed nothing in this matter. However, the Court notes that

1 Plaintiff filed two motions requesting an extension of time “to prepa[re] response to order
2 granting motion for dismissal with leave to amend complaint” in a different case which is
3 closed. *See Moore v. Hatton, et al.*, Case No. 17-03696 BLF (PR), Dkt. Nos. 35, 38.
4 Apparently, Plaintiff has his case numbers confused. Accordingly, in the interest of
5 justice, the Court will *sua sponte* grant Plaintiff an extension of time to file an amended
6 complaint in this matter.

7 Within **twenty-eight (28) days** from the date this order is filed, Plaintiff shall file
8 an amended complaint using the court’s form complaint to attempt to state sufficient facts
9 to state a First Amendment retaliation claim. The amended complaint must include the
10 caption and civil case number used in this order, *i.e.*, **Case No. C 20-01445 BLF (PR)**, and
11 the words “AMENDED COMPLAINT” on the first page. **Plaintiff must not make any**
12 **reference to Case No. 17-03696 BLF, which is a closed matter, to avoid any further**
13 **delays in this matter.** Plaintiff must answer all the questions on the form in order for the
14 action to proceed. Plaintiff is reminded that the amended complaint supersedes the
15 original, and Plaintiff may not make references to the original complaint. Claims not
16 included in the amended complaint are no longer claims and defendants not named in an
17 amended complaint are no longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262
18 (9th Cir.1992).

19 **Failure to respond in accordance with this order by filing an amended**
20 **complaint in the time provided will result in the dismissal of this action without**
21 **prejudice and without further notice to Plaintiff.**

22 **IT IS SO ORDERED.**

23 **Dated: __September 9, 2020__**


BETH LABSON FREEMAN
United States District Judge

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26 Order Granting EOT to File Am. Compl.
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