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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MUHAMMAD KHAN,
Plaintiff,

v.

M. PAYTON,
Defendant.

Case No. 20-03086 BLF (PR)

**ORDER GRANTING MOTION
FOR EXTENSION OF TIME TO
FILE AMENDED COMPLAINT;
STAYING BRIEFING; DENYING
MOTION FOR EXTENSION OF
TIME AS MOOT**

(Docket Nos. 14, 15)

Plaintiff, a state prisoner, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against an officer at San Quentin State Prison. Dkt. No. 1. On September 9, 2020, the Court found the complaint stated three cognizable claims, but dismissed the First Amendment retaliation claim with leave to amend. Dkt. No. 12. Plaintiff was directed to file an amended complaint within twenty-eight days from the date the order was filed, with the advisement that failure to respond in the time provided would result in the action proceeding solely on the cognizable claims. *Id.* at 5. When the deadline passed without a response from Plaintiff, the Court ordered service on Defendant on the cognizable claims on October 19, 2020. Dkt. No. 13.

On November 4, 2020, Plaintiff filed a letter stating that he had no access to the law library due to COVID lockdown and lack of access to his legal documents. Dkt. No. 14.

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He seeks an extension of time to file an amended complaint to revise his retaliation claim. *Id.* Good cause appearing, the motion is GRANTED IN PART. While Plaintiff seeks 90-120 days, only an extension of 56 days (8 weeks) shall be granted. Within **fifty-six (56) days** from the date this order is filed, Plaintiff shall file an amended complaint using the court’s form complaint to attempt to state sufficient facts to state a First Amendment retaliation claim. He must also include all the claims which the Court found cognizable in the original complaint. The amended complaint must include the caption and civil case number used in this order, *i.e.*, Case No. C 20-03086 BLF (PR), and the words “AMENDED COMPLAINT” on the first page. Plaintiff must answer all the questions on the form in order for the action to proceed. Plaintiff is reminded that the amended complaint supersedes the original, and Plaintiff may not make references to the original complaint. Claims not included in the amended complaint are no longer claims and defendants not named in an amended complaint are no longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

Meanwhile, briefing in this matter is STAYED. Defendants’ motion for an extension of time is DENIED as moot. Dkt. No. 15. The Court will set a new briefing schedule once Plaintiff files an amended complaint or the time for filing it has passed.

Failure to respond in accordance with this order by filing an amended complaint in the time provided will result with the matter proceeding on the cognizable claims identified in the Court’s Order of Dismissal with leave to Amend, Dkt. No. 12, without further notice to Plaintiff.

This order terminates Docket Nos. 14 and 15.

IT IS SO ORDERED.

Dated: January 6, 2021


BETH LABSON FREEMAN
United States District Judge

Order Granting Mot. for EOT to File Am. Compl.
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