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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

3	DAVID BURNS,
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5	v.
5	JESSE COX, et. al.

Defendants

Case No.: 3:18-cv-00231-MMD-WGC

Order

Re: ECF No. 39

9 Before the court is Plaintiff's Request for Leave to Amend (ECF No. 39) and proposed
10 third amended complaint (ECF No. 39-1).

11 Plaintiff, who is in the custody of the Nevada Department of Corrections (NDOC), filed a 12 pro se civil rights complaint under 42 U.S.C. § 1983. A global mediation was held to attempt to 13 resolve three of Plaintiff's lawsuits, but was unsuccessful. The court then screened his original 14 complaint and allowed him to proceed with the following claims: (1) a Fourteenth Amendment 15 due process claim in Count I against Schmidt and Oxborrow based on allegations that Plaintiff 16 was placed in administrative segregation for four months without a review and under conditions 17 constituting an atypical and significant hardship; and (2) an Eighth Amendment conditions of 18 confinement claim in Count II against Williams, Isenbergh, Deshane, Rose and Boon-Sharp based 19 on allegations that while in administrative segregation the noise from mentally ill inmates housed 20|in the unit caused Plaintiff to suffer excruciating headaches and sleep deprivation which these 21 defendants knew of and failed to prevent. Count III, naming defendants Healer and Clay, was 22 dismissed. (Screening Order, ECF No. 21.)

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On August 12, 2019, Plaintiff filed his motion seeking leave to amend, and his proposed 1 2 amended complaint. (ECF Nos. 24, 24-1.) The proposed amended complaint omitted Count III, 3 and added defendants and allegations to the due process claim in Count I. Specifically, it alleged 4 that Sandoval, Southworth and Filson also violates his due process rights because they knew, via 5 grievance, that Plaintiff was not given a due process hearing after being placed in administrative segregation but failed to act to remedy the situation. The court granted Plaintiff leave to amend to 6 7 add these defendants and allegations. The court noted that the amended complaint continued to name defendants Healer and Clay, who were dismissed from the original complaint; and, because 8 9 the amended complaint included no claims or allegations against them the court ordered that they 10|remained dismissed. In sum, the court ordered that the amended complaint be filed and proceed 11 with the following claims: (a) the Fourteenth Amendment due process claim in Count I against Filson, Oxborrow, Sandoval, Schmidt, and Southworth; (b) the Eighth Amendment conditions of 12 confinement claim in Count II against Boon-Sharp, Cox, Deshane, Isenbergh, Rose and Williams. 13 14 On September 30, 2019, Plaintiff filed a Request for Leave to Amend and proposed third 15 amended complaint. (ECF Nos. 39, 39-1.) Plaintiff merely seeks to amend his request for relief.

Under Federal Rule of Civil Procedure 15(b), leave to amend should be freely given when required by justice. Given that this case is still in the early stages, the court finds leave to amend is appropriate. The court does point out that Plaintiff titles his proposed amendment the third amended complaint, when in reality it should be the second amended complaint (as there is only an original and first amended complaint on file). In addition, like the amended complaint, the proposed amendment omitted Healer, but still names Clay as a defendant and there are no allegations against Clay.

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CONCLUSION

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(1) Plaintiff's motion to amend (ECF No. 39) is **GRANTED**. The proposed amended complaint, though titled the third amended complaint, is actually the second amended complaint.

(2) The Clerk shall **FILE** the second amended complaint (ECF No. 39-1).

6 (3) The second amended complaint shall proceed with the following claims: (a) the
7 Fourteenth Amendment due process claim in Count I against Filson, Oxborrow, Sandoval,
8 Schmidt, and Southworth; (b) the Eighth Amendment conditions of confinement claim in Count
9 II against Boon-Sharp, Cox, Deshane, Isenbergh, Rose and Williams. Defendants Healer and Clay
10 will remain dismissed from this action.

(4) Within 21 days of the date of this Order, Defendants who have appeared must file an
answer or otherwise respond to the second amended complaint.

(5) Service was not previously accepted on behalf of defendants Timothy Filson and
Michael Oxborrow, however, the Attorney General has filed the last known address of these
defendants under seal. (ECF No. 35.) The Clerk has already issued summonses for Filson and
Oxborrow. The Clerk shall SEND two copies of the second amended complaint (ECF No. 39-1)
and two copies of this order to the U.S. Marshal for service on the defendants. The Clerk should
already have sent Plaintiff the two USM-285 forms, and Plaintiff shall still complete and return
those forms by October 18, 2019.

20 IT IS SO ORDERED.

21 Dated: October 2, 2019

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With G. Cobb

William G. Cobb United States Magistrate Judge