

Am. Compl.) Mr. Tsosie denied assaulting any member of the prison staff. *Id.*

On September 21, 2010, defendants filed a motion to dismiss, or in the alternative, motion for summary judgment. (Doc. 42.) A timely supporting brief, exhibits and statement of fact were filed on October 5, 2010. (Docs. 47 and 48.) Mr. Tsosie's response to defendants' motion was due on or before October 22, 2010. To date he has not filed a response.

Presently before the Court are two motions filed by Mr. Tsosie. First is a motion to clarify, or allowance to file an amended complaint. (Doc. 50.) The second is a motion to stay these proceedings due to his impending transfer to another prison. (Doc. 51.) For the following reasons, Mr. Tsosie's motion to clarify will be denied, but his motion to stay will be deemed an motion for enlargement of time to respond to defendants' pending motion, and granted.

In his motion to clarify, Mr. Tsosie seeks to address one of defendants' summary judgment arguments concerning his utilization of the prison's administrative remedy system to address two different grievances. He seeks to define his litigation by the events contained in administrative remedy 568524. (Doc. 50.) Mr. Tsosie does not provide a proposed draft amended complaint with his filing.

The filing of an Amended Complaint is governed by [Fed. R. Civ. P. 15\(a\)](#):

(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within:

(A) 21 after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or

21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Fed. R. Civ. P. 15(a). Based on the procedural history of this case, Mr. Tsosie cannot file a second amended complaint without defendants' consent or the Court's leave. Based on Mr. Tsosie's filing, and his yet unexercised right to respond to defendants' motion to dismiss, or in the alternative, motion for summary judgment, in which he can address defendants' exhaustion arguments, there is no warrant to grant leave to file another amended complaint.

Turning to his motion to stay based on his impending transfer to another federal correctional facility, the Court will construe the motion as a request for enlargement of time to file a response to defendants' pending motion. Mr. Tsosie will be granted an additional forty-five (45) days from the date of this Order to file his opposition brief, answer to defendants' statement of facts, and supporting exhibits.

ACCORDINGLY, THIS 25th DAY OF OCTOBER, 2010, IT IS HEREBY

ORDERED THAT:

1. Mr. Tsosie's Motion to Clarify, Motion to Amend / Correct Amended Complaint (doc. 50) is denied.
2. The Court will construe Plaintiff's Motion to Stay (doc. 51) as a Motion for Enlargement of Time to Respond to Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.

3. Plaintiff's Motion for Enlargement (doc. 51) is granted.
4. Mr. Tsosie shall file his opposition to defendants' pending motion on or before December 9, 2010.

/s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge