UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-4451 FMO (FFMx)	Date	June 12, 2017
Title	Andres Gomez v. Ciccero's Pizza, Inc., <u>et al.</u>		

Present: The Honorable	Fernando M. Olguin, United States District Judge			
Vanessa Figueroa		None Present		
Deputy C	lerk	Court Reporter / Recorder		
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:		
None Present		None Present		
Proceedings: (In Chambers) Order to Show Cause Re: Lack of Prosecution				

Pursuant to the Court's Order of November 29, 2016 (Dkt. 17), the court granted defendants' motion to dismiss, and plaintiff was "granted until December 15, 2016, to file a first amended complaint[.]" (See id. at 2). Plaintiff was "cautioned that failure to timely file a First Amended Complaint may result in this action being dismissed without prejudice for failure to prosecute and/or failure to comply with a court order." (See id. at 3). As of the filing date of this Order, a first amended complaint has not been filed. (See, generally, Dkt.). Even though plaintiff's

First Amended Complaint was due nearly six months ago, the court will give plaintiff one final opportunity to file a First Amended Complaint. In addition, plaintiff should note that the court finds merit to defendants' contention that plaintiff lacks jurisdiction because defendants "hired [a] licensed CASp inspector [] to perform a CASp inspection of the entire shopping center where [defendants' restaurant] is located[.]" (Dkt. 13-1, Motion to Dismiss at 3). Defendants "immediately began efforts to remediate all ADA non-compliance [] and in fact completed those repairs." (Id.). "As a result, the parking area contained

clearly marked signage and parking, as well as proper access ramps for disabled persons." (Id.).

Based on the foregoing IT IS ORDERED THAT:

1. If plaintiff still wishes to pursue this action, he is granted until **June 16, 2017**, to file a First Amended Complaint attempting to cure the defects identified above as well as the other defects outlined in defendants' motion to dismiss.

2. The first amended complaint must be labeled "First Amended Complaint," filed in compliance with Local Rule 3-2 and contain the case number assigned to the case, <u>i.e.</u>, Case No. CV 16-4451 FMO (FFMx). In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to make his First Amended Complaint complete. Local Rule 15-2 requires that an amended pleading be complete in and of itself without reference to any prior pleading. This is because, as a general rule, an amended pleading supersedes the original pleading. <u>See Ramirez v. Cnty. of San Bernardino</u>, 806 F.3d 1002, 1008 (9th Cir. 2015) ("It is well-established in our circuit that an amended complaint supersedes the original, the latter being treated thereafter as non-existent. In other words, 'the original pleading no longer performs any function[.]")

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(citations and internal quotation marks omitted).

3. Plaintiff is cautioned that failure to timely file a First Amended Complaint may result in this action being dismissed without prejudice for failure to prosecute and/or failure to comply with a court order. <u>See</u> Fed. R. Civ. P. 41(b); <u>Link v. Wabash R.R. Co.</u>, 370 U.S. 626, 629-30, 82 S.Ct. 1386, 1388 (1962).

4. Defendants shall file their Answer to the First Amended Complaint or a motion pursuant to Fed. R. Civ. P. 12 no later than **June 29, 2017**.

5. In the event defendant wishes to file another motion to dismiss, then counsel for the parties shall, on **June 22, 2017, at 10:00 a.m.**¹ meet and confer in person at an agreed upon location within the Central District of California" to discuss defendant's motion to dismiss. Defendant's motion must include copies of all meet and confer letters as well as a declaration that sets forth, in detail, the entire meet and confer process (<u>i.e.</u>, when and where it took place, how long it lasted and the position of each attorney with respect to each disputed issue that will be the subject of the motion). Failure to include such a declaration will result in the motion being denied.

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 Initials of Preparer
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¹ Counsel may agree to meet and confer at another time and place without seeking court approval for such an agreement.