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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANTE ROLANDO HARRIS,

CASE NO. 1:09-cv-00781-MJS (PC)

Plaintiff,

ORDER DENYING PLAINTIFF'S MOTION TO
SUPPLEMENT PLEADINGS AND
GRANTING PLAINTIFF LEAVE TO FILE A
SECOND AMENDED COMPLAINT

v.

H. A. RIOS, et al.,

(ECF No. 29)

Defendants.

SECOND AMENDED COMPLAINT DUE
WITHIN THIRTY DAYS

ORDER

Plaintiff Dante Rolando Harris ("Plaintiff") is a federal prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Plaintiff consented to Magistrate Judge jurisdiction on May 18, 2009. (ECF No. 7.) Plaintiff's First Amended Complaint, filed February 11, 2010, has yet to be screened by the Court. (ECF No. 19.) Plaintiff has since filed two Motions to Supplement Pleadings which were denied; however, the Court gave Plaintiff leave to file an amended complaint. (ECF Nos. 23, 26, & 27.) An

1 amended complaint was due by July 1, 2010. Plaintiff has not filed another amended
2 complaint. Instead, Plaintiff filed a third Motion to Supplement Pleadings, which is now
3 pending before the Court. (ECF No. 29.)
4

5 Plaintiff seeks to supplement the complaint to include allegations of conduct that
6 occurred in July 2010. The most recent complaint in this action sets forth allegations of
7 conduct that occurred as late as March 2009. Federal Rules of Civil Procedure 15(d)
8 provides that a court may permit a party to supplement his pleadings “setting out any
9 transaction, occurrence, or event that happened after the date of the pleading to be
10 supplemented.” The proposed supplementation concerns occurrences that happened after
11 the First Amended Complaint was filed.
12

13 Pursuant to Federal Rule of Civil Procedure 15(a), Plaintiff may amend his complaint
14 once as a matter of course, so long as a responsive pleading has not been filed. There
15 has been no service of process and no defendant has entered an appearance in this
16 action. The Court will therefore DENY Plaintiff’s Motion to Supplement Pleadings, but will
17 GRANT Plaintiff leave to file an amended complaint pursuant to Rule 15(a).
18

19 In his Amended Complaint, Plaintiff must demonstrate that the alleged incident or
20 incidents resulted in a deprivation of his constitutional rights. Ashcroft v. Iqbal, 129 S.Ct.
21 1937, 1948-49 (2009). Plaintiff must set forth “sufficient factual matter . . . to ‘state a claim
22 that is plausible on its face.’” Id. at 1949 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S.
23 544, 555 (2007)). Plaintiff must also demonstrate that each defendant personally
24 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
25 2002).
26

27 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint

1 be complete in itself without reference to any prior pleading. As a general rule, an
2 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,
3 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no longer
4 serves any function in the case. Therefore, in an amended complaint, as in an original
5 complaint, each claim and the involvement of each defendant must be sufficiently alleged.
6 The amended complaint should be clearly and boldly titled "Second Amended Complaint,"
7 refer to the appropriate case number, and be an original signed under penalty of perjury.
8

9 Based on the foregoing, it is HEREBY ORDERED that:

- 10 1. Plaintiff's Motion to Supplement Pleadings is DENIED;
- 11 2. Plaintiff is GRANTED leave to file an amended complaint;
- 12 3. Plaintiff shall caption the amended complaint "Second Amended Complaint"
13 and refer to the case number 1:09-cv-781-MJS (PC);
- 14 4. The Clerk's Office shall send Plaintiff a Complaint form;
- 15 5. Within **thirty (30) days** from the date of service of this order, Plaintiff shall
16 file his Second Amended Complaint;
- 17 6. Plaintiff's amended complaint may not add any new unrelated claims other
18 than those specified in the Motion to Supplement; any attempt to do so will
19 result in an order striking the amended complaint; and
20

21
22 7.If Plaintiff fails to comply with this Order, this action will proceed on his First
23 Amended Complaint.

24 IT IS SO ORDERED.

25
26 Dated: January 19, 2011

Isl. Michael J. Seng

UNITED STATES MAGISTRATE JUDGE

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