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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LEROY DEWITT HUNTER,  
Plaintiff,

v.

ATTORNEY GENERAL, et al.,  
Defendants.

CASE NO. 1:09-cv-1556-MJS (PC)

ORDER REQUIRING PLAINTIFF TO FILE AN  
AMENDED COMPLAINT BY OCTOBER 1,  
2010 OR CASE WILL BE DISMISSED FOR  
FAILURE TO PROSECUTE

Plaintiff Leroy Hunter ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On May 28, 2010, the Court dismissed Plaintiff's complaint for failure to state a claim upon which relief could be granted. (ECF No. 12.) Plaintiff was given leave to amend his complaint by June 30, 2010. Plaintiff then moved the Court to appoint an attorney to assist him. (ECF No. 14.) The Court denied Plaintiff's motion and Plaintiff appealed. (ECF Nos. 15 & 17.) The Ninth Circuit dismissed Plaintiff's appeal for lack of jurisdiction. (ECF No. 22.)

Through all this, Plaintiff has still not filed an amended complaint. As such, there is no operative pleading in this case. Although it would be within the Court's discretion to dismiss this action at this time, see, e.g., Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to lack of prosecution and failure to comply with local rules), the Court will allow Plaintiff one more opportunity to file an amended complaint. Plaintiff shall file an amended complaint by

1 **October 1, 2010** or his case will be dismissed for failure to prosecute.

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3 IT IS SO ORDERED.

4 Dated: September 10, 2010

*/s/ Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE

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