

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

CARL ETHRIDGE,

Plaintiff,

vs.

CHILDS, et al.,

Defendants.

CASE No. 1:10-cv-01962-LJO-MJS (PC)

ORDER DENYING PLAINTIFF'S REQUEST
TO SUPPLEMENT FIRST AMENDED
COMPLAINT BUT GRANTING LEAVE TO
FILE A SECOND AMENDED COMPLAINT

(ECF No. 13)

THIRTY DAY DEADLINE

I. PROCEDURAL HISTORY

On October 20, 2010, Plaintiff Carl Ethridge, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) Plaintiff declined to extend Magistrate Judge jurisdiction for all purposes and proceedings. (Decline Magistrate, ECF No. 9.)

The Court screened Plaintiff's Complaint on December 29, 2011, and dismissed it for failure to state a claim, but gave leave to file an amended complaint. (Order Dismiss Compl., ECF No. 11.) Plaintiff filed a First Amended Complaint on January 23, 2012. (First. Am. Compl., ECF No. 12.) The First Amended Complaint has not yet been screened.

Pending before the Court is Plaintiff's supplemental amendment to First Amended Complaint filed on December 21, 2012, which the Court construes as a motion to supplement the First Amended Complaint. (Mot. Supp., ECF No. 13.)

1 **II. APPLICABLE LAW**

2 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend his
3 pleading once as a matter of course at any time before a responsive pleading is served.
4 Otherwise, a party may amend only by leave of the court, or by written consent of the
5 adverse party, and leave shall be freely given when justice so requires. Fed. R. Civ. P.
6 15(a).

7 “Rule 15(a) is liberal and leave to amend shall be given when justice so
8 requires.” Amerisource Bergen Corp. v. Dialysis West, Inc., 465 F.3d 946, 951 (9th Cir.
9 2006), quoting Fed. R. Civ. P. 15(a).

10 An amended pleading must be complete within itself without reference to another
11 pleading. Partial amendments are not permissible. Local Rule 220.

12 **III. ANALYSIS**

13 Here, Plaintiff asks to file a supplement to his underlying First Amended
14 Complaint to include a demand for jury trial. Plaintiff’s proposed supplement to the First
15 Amended Complaint is deficient because it is not a complete pleading in and of itself,
16 but instead is dependent upon the underlying pleading.

17 Any pleading must contain “a short and plain statement of the claim showing that
18 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
19 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
20 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
21 662, 129 S.Ct. 1937, 1949 (2009), citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
22 555 (2007). A plaintiff must set forth “sufficient factual matter, accepted as true, to state
23 a claim that is plausible on its face.” Id. Facial plausibility demands more than the mere
24 possibility that a defendant committed misconduct and, while factual allegations are
25 accepted as true, legal conclusions are not. Id. at 1949–50.

26 If Plaintiff wishes to file a second amended complaint, he may do so within thirty
27 days following service of this order. If he does so, he must file a pleading that is
28 consistent with the foregoing standards and complete in and of itself.

1 Should Plaintiff fail to file a second amended complaint within this thirty day
2 period, the Court will assume he wishes to proceed on the underlying First Amended
3 Complaint.

4 **IV. ORDER**

5 Accordingly, for the foregoing reasons, it is HEREBY ORDERED that:

- 6 1. Plaintiff's supplemental amendment to First Amended Complaint
7 construed as a motion to supplement the First Amended Complaint (ECF
8 No. 13) is DENIED, and
- 9 2. Plaintiff is GRANTED leave to file a second amended complaint by not
10 later than thirty days following service of this order, in the absence of a
11 timely filed second amended complaint, this matter will proceed on the
12 underlying First Amended Complaint.

13
14 IT IS SO ORDERED.

15 Dated: January 2, 2013

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE