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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BRADY K. ARMSTRONG,  
  
Plaintiff,  
  
vs.  
  
A. HEDGPETH, et al.,  
  
Defendants.

1:11-cv-00761-LJO-GSA-PC  
  
ORDER FOR CLERK TO REMOVE  
COMPLAINT FILED ON SEPTEMBER 9,  
2013 FROM THIS ACTION AND OPEN  
NEW CASE  
(Doc. 39.)  
  
ORDER FOR CLERK TO FILE  
COMPLAINT LODGED ON SEPTEMBER  
10, 2013, AS FIRST AMENDED  
COMPLAINT FOR THIS ACTION  
(Doc. 40.)

**I. BACKGROUND**

Brady K. Armstrong ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on May 11, 2011. (Doc. 1.) On February 15, 2013, the court dismissed the Complaint for failure to state a claim, with leave to amend. (Doc. 23.)

On September 9, 2013, Plaintiff submitted a complaint to the court which was filed by the Clerk as the First Amended Complaint in this action. (Doc. 39.)

On September 10, 2013, Plaintiff submitted a complaint to the court which was lodged by the Clerk as a proposed Second Amended Complaint in this action. (Doc. 40.)

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1 **II. DISCUSSION**

2 The court has reviewed the complaint filed on September 9, 2013 in this action (“Sept.  
3 9th Complaint”), and finds that it was erroneously filed in this action. Plaintiff alleges in the  
4 Sept. 9th Complaint that the sole defendant, Correctional Officer D. Hicks, retaliated against  
5 him in 2007 for filing an inmate appeal against defendant Hicks for fabricating a Rules  
6 Violation Report against Plaintiff. These allegations are entirely different from the allegations  
7 in the instant action, in which Plaintiff names several defendants, who are largely medical  
8 personnel, and alleges that they denied him adequate medical care after he suffered a stroke on  
9 January 3, 2010. While it is true that Plaintiff was ordered on February 15, 2013, to submit an  
10 amended complaint for this action, the Sept. 9th Complaint does not appear to be that amended  
11 complaint. Instead, the court finds evidence that the complaint lodged on September 10th  
12 (Sept. 10th Complaint) was meant to be the First Amended Complaint for this action.

13 The Sept. 10th Complaint names many of the defendants previously named in this  
14 action -- Dr. L. Dileo, Nurse Rumsey, MTA Terronez, Dr. Spaeth, and Nurse Gomez – and,  
15 similar to this action, alleges that Plaintiff was denied adequate medical care by defendants  
16 after suffering a stroke on January 3, 2007. Plaintiff titled the Sept. 10th Complaint “First  
17 Amended Complaint” and makes reference to dismissal of the original Complaint on February  
18 15, 2013, with leave to amend, which occurred in this action. (Doc. 40 at 1:19-22, referring to  
19 Doc. 23.) The case number for this action, “11CV-00761-LJO-GSA-PC,” is clearly typewritten  
20 on the face of the Sept. 10th Complaint. Based on this evidence, the court finds that the Sept.  
21 10th Complaint serves as the First Amended Complaint for this action. Therefore, the Clerk  
22 shall be directed to file the Sept. 10th Complaint as the First Amended Complaint for this  
23 action.

24 The court also finds that the Sept. 9th Complaint was erroneously filed in this action.  
25 Moreover, there is no evidence on the court’s record that the Sept. 9th Complaint belongs in  
26 any of Plaintiff’s other pending cases at this court. Therefore, the Clerk shall be directed to  
27 remove the Sept. 9th Complaint from this action and use it to open a new case.

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1 **IV. CONCLUSION**

2 Based on the foregoing, IT IS HEREBY ORDERED that:

3 1. The Clerk of Court is directed to remove the complaint filed on September 9,  
4 2013 from this action and use it to open a new case; and

5 2. The Clerk of Court is directed to file the complaint lodged on September 10,  
6 2013, as the First Amended Complaint for this action.

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10 IT IS SO ORDERED.

11 Dated: November 20, 2013

/s/ Gary S. Austin  
12 UNITED STATES MAGISTRATE JUDGE  
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