

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. PAYAN,  
Plaintiff,  
v.  
TATE, et al.,  
Defendants.

No. 1:13-cv-00807 LJO BAM PC  
ORDER GRANTING PLAINTIFF’S  
REQUEST TO WITHDRAW HIS MOTION  
TO AMEND  
(ECF No. 123)

Plaintiff Michael J. Payan (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. This action is proceeding on Plaintiff’s October 19, 2015, First Amended Complaint.

On April 19, 2016, the Court granted Defendants’ motion for summary judgment for failure to exhaust in part and dismissed certain claims. After Defendants had filed their motion for summary judgment for failure to exhaust, but before the Court ruled on it, the Court granted Plaintiff leave to file an amended complaint asserting certain claims. Plaintiff filed his First Amended Complaint on October 19, 2015. Defendants filed a motion to dismiss the claims in the First Amended Complaint. That motion is pending.

On June 6, 2016, Plaintiff opposed the Defendants’ motion to dismiss (Doc. 122), and in conjunction with his opposition, Plaintiff filed a Motion to Amend his First Amended Prisoner Civil Rights Complaint. (Doc. 123.) On August 15, 2016, Plaintiff filed a Second Motion to

1 Supplement the First Amended Complaint. (Doc. 133.) In this Second Motion, Plaintiff asks the  
2 Court to strike his previous Motion to Amend and substitute the Second Motion to Supplement.

3  
4 Plaintiff respectfully requests this court strike Plaintiffs previous May  
5 (approximately) 30<sup>th</sup>, 2016 “Motion to Supplement Plaintiff’s First Amended  
6 Complaint” and “(purposed) Plaintiff’s Supplemental Pleadings” and except  
7 (Second Purposed) Plaintiff’s supplemental pleadings. Doc. 133 p. 2.

8 (Doc. 133, p. 2) (unedited.)

9 The Court understands from this request that Plaintiff wishes to withdraw his first  
10 motion to amend, filed on June 6, 2016, and substitute the later filed “second” motion to  
11 supplement. (Doc. 133)

12 Based upon Plaintiff’s request to withdraw his Motion to Amend, IT IS HEREBY  
13 ORDERED that the motion is WITHDRAWN. The Clerk of the Court is directed to term  
14 the motion, Doc. 123, from pending motions.

15 IT IS SO ORDERED.

16 Dated: March 5, 2017

17 /s/ Barbara A. McAuliffe  
18 UNITED STATES MAGISTRATE JUDGE

19  
20  
21  
22  
23  
24  
25  
26  
27  
28