

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 DANA GRAY,

12 Plaintiff,

13 vs.

14 ROMERO, et al.,

15 Defendants.
16
17
18

1:13-cv-01473-DAD-GSA-PC

**ORDER STRIKING FIFTH AMENDED
COMPLAINT FOR EXCESS PAGES,
WITHOUT LEAVE TO AMEND
(ECF No. 205; also resolves No. 203.)**

**ORDER REQUIRING PARTIES TO
NOTIFY COURT WHETHER A
SETTLEMENT CONFERENCE
WOULD BE BENEFICIAL**

THIRTY (30) DAY DEADLINE

19 **I. BACKGROUND**

20 Dana Gray (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action
21 pursuant to 42 U.S.C. § 1983. This case was filed on September 12, 2013. (ECF No. 1.) On
22 May 2, 2016, the court issued a discovery and scheduling order opening discovery and setting
23 deadlines for the parties. (ECF No. 60.) The deadlines were extended on July 22, 2016 and
24 November 22, 2016. (ECF Nos. 106, 148.) Discovery is now closed and all of the deadlines
25 have expired. On March 28, 2017, the court granted defendant Rebel’s motion to dismiss,
26 defendant Ziomek’s motion for judgment on the pleadings, and defendant Mundunuri’s motion
27 for judgment on the pleadings. (ECF No. 184) Plaintiff was granted leave to file a Fifth
28 Amended Complaint not exceeding twenty-five pages in length. (Id.)

1 **II. FIFTH AMENDED COMPLAINT**

2 On May 2, 2017, Plaintiff filed the Fifth Amended Complaint. (ECF No. 205.)
3 Plaintiff's Fifth Amended Complaint is forty-four pages long, which exceeds the twenty-five
4 page limit imposed by the court. Therefore, the Fifth Amended Complaint shall be stricken
5 from the record.¹

6 **III. NO LEAVE TO AMEND**

7 Plaintiff shall not be granted leave to amend the complaint until after the resolution of
8 pending motions affecting the content of the complaint. Plaintiff has filed a motion to
9 supplement the complaint; motion to strike part of the Magistrate's findings and
10 recommendations of January 8, 2017; motion to accept Plaintiff's objections to the findings and
11 recommendations; and motion for reconsideration of the court's March 28, 2017, order. Until
12 these issues are resolved, it does not serve judicial efficiency or benefit the parties to allow
13 Plaintiff to file a Sixth Amended Complaint.

14 **IV. SETTLEMENT CONFERENCE**

15 Plaintiff has indicated that she is "eager to regain her health and to proceed to
16 settlement and/or trial." (ECF No. 204 at 3:4-5.) Therefore, the court now inquires of the
17 parties whether a settlement conference would be beneficial in this case.

18 The court is able to refer cases for mediation before a participating United States
19 Magistrate Judge. Settlement conferences are ordinarily held in person at the court or at a
20 prison in the Eastern District of California. Plaintiff and Defendants shall notify the court
21 whether they believe, in good faith, that settlement in this case is a possibility and whether they
22 are interested in having a settlement conference scheduled by the court.²

23 Defendants' counsel shall notify the court whether there are security concerns that
24 would prohibit scheduling a settlement conference. If security concerns exist, counsel shall
25

26 ¹ When a document is stricken, it becomes a nullity and is not considered by the court for any purpose.

27 ² The parties may wish to discuss the issue by telephone in determining whether they believe settlement
28 is feasible.

1 notify the court whether those concerns can be adequately addressed if Plaintiff is transferred
2 for settlement only and then returned to prison for housing.

3 **V. CONCLUSION**

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

- 5 1. Plaintiff's Fifth Amended Complaint, filed on May 2, 2017, is STRICKEN from
6 the record for exceeding the twenty-five page limit imposed by the court,
7 without leave to amend; and
- 8 2. Within **thirty (30) days** from the date of service of this order, Plaintiff and
9 Defendants shall file a written response to this order, notifying the court if a
10 settlement conference would be beneficial.³

11 IT IS SO ORDERED.

12
13 Dated: May 4, 2017

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 ³ The issuance of this order does not guarantee referral for settlement, but the court will make every reasonable attempt to secure the referral should both parties desire a settlement conference.