

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RICARDO VERDUZCO,

Plaintiff,

v.

C. GIPSON, et al.,

Defendants.

Case No. 1:14-cv-01083-AWI-SAB-PC

ORDER DENYING PLAINTIFF'S MOTION
TO ADD DEFENDANTS TO THE
COMPLAINT AND DIRECTING
PLAINTIFF TO NOTIFY OF THE COURT
OF WILLINGNESS TO PROCEED ONLY
ON COGNIZABLE CLAIM

(ECF NO. 20)

RESPONSE DUE IN THIRTY DAYS

Plaintiff is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff's May 25, 2016, motion requesting the Court to consider all of the Defendants to be a part of the complaint (ECF No. 20.)

On April 29, 2016, an order was entered, finding that the first amended complaint stated a claim for relief against Defendant Rousseau for due process violations and for retaliation. (ECF No. 19.) The first amended complaint failed to state any other claims for relief. The Court ordered Plaintiff to either file an amended complaint correcting the deficiencies identified by the Court, or notify the Court of his intention to proceed only on the claims found to be cognizable.

On May 25, 2016, Plaintiff filed a motion requesting that the Court add all of the named

1 Defendants to the complaint. (ECF No. 20.) In his motion, Plaintiff explains why he states a
2 claim as to the remaining Defendants. Plaintiff indicates that he disagrees with the Court's order
3 regarding the remaining Defendants. Plaintiff also indicates that if the Court disagrees with his
4 arguments, he is willing to proceed only on the claims found to be cognizable. Plaintiff is
5 advised that, pursuant to the April 29, 2016, order, he may only file a second amended
6 complaint, or notify the Court that he intends to proceed only on the claims found to be
7 cognizable. Plaintiff was specifically warned that if he chose the latter course, the Court would
8 recommend dismissal of the remaining claims and Defendants. (ECF No. 19 at 8:21.) Should
9 Plaintiff disagree with the Court's findings that he failed to state a claim against the remaining
10 Defendants, he must file a second amended complaint. Plaintiff may not file objections, or any
11 other document setting forth his disagreement with the April 29, 2016, order. The Court will
12 grant Plaintiff a further opportunity to cure the deficiencies identified in the first amended
13 complaint by filing a second amended complaint.

14 Plaintiff is reminded that a second amended complaint supersedes the first amended
15 complaint, Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814
16 F.2d 565, 567 (9th Cir. 1987), and must be "complete in and of itself without reference to the
17 prior or superseded pleading," Local Rule 220. "All causes of action alleged in the second
18 amended complaint which are not alleged in the first amended complaint are waived." King, 814
19 F.2d at 567 (citing to London v. Coopers Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
20 Forsyth, 114 F.3d at 1474.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. The Clerk's Office shall send to Plaintiff a civil rights complaint form;
- 23 2. Plaintiff's motion requesting the Court to add Defendants to the first amended
24 complaint filed on May 24, 2016, is DENIED; and
- 25 3. Plaintiff is granted thirty days from the date of service of this order in which to either
26 notify the Court of his intention to proceed on the claims found to be cognizable, or to
27 file a second amended complaint. Should Plaintiff file objections to the April 29,
28 2016, order in any form other than a second amended complaint, the Court will

1 recommend dismissal of the remaining claims and Defendants as described in the
2 order dismissing the first amended complaint.

- 3 4. Plaintiff's failure to respond to this order will result in a recommendation that this
4 action be dismissed for failure to prosecute and to obey a court order.

5
6 IT IS SO ORDERED.

7 Dated: October 13, 2016


UNITED STATES MAGISTRATE JUDGE