

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VANCE D. JACKSON,

Case No. 1:14-cv-1311-LJO-MJS (PC)

Plaintiff,

v.

DAVE DAVEY, et al.

Defendants.

**ORDER DENYING AS MOOT MOTION
TO SET ASIDE COURT ORDER
DISMISSING COMPLAINT WITH LEAVE
TO AMEND**

(ECF No. 11)

**CLERK OF COURT TO FILE
DOCUMENT NO. 11-2 AS FIRST
AMENDED COMPLAINT**

Plaintiff is a state prisoner proceeding in forma pauperis who initiated this civil rights action pursuant to 28 U.S.C. § 1983 on August 22, 2014. (ECF Nos. 1 & 4.)

On October 30, 2014, the Court screened Plaintiff's complaint, and dismissed it for failure to state a claim but gave leave to amend within thirty days. (ECF No. 9.) Plaintiff since has obtained counsel. (ECF No. 10.)

Before the Court is Plaintiff's motion to set aside the Court's order dismissing the complaint with leave to amend. (ECF No. 11.) Plaintiff seeks to amend the complaint and to add additional defendants and claims.

The Court's order granted Plaintiff leave to amend. (ECF No. 9.) Additionally, and

1 as Plaintiff points out, at this stage of the proceedings Plaintiff may amend his complaint
2 once as a matter of course. Fed. R. Civ. P. 15(a). Accordingly, Plaintiff is free to file an
3 amended pleading. His motion to set aside the Court's screening order will be denied as
4 moot. The Clerk of Court will be directed to file the proposed amended complaint (ECF
5 No. 11-2) as the first amended complaint in this action.

6 To the extent Plaintiff seeks immediate service of his amended complaint (see
7 ECF No. 11-4 at 2), that request is denied. The Court is required to screen complaints
8 brought by prisoners seeking relief against a governmental entity or officer or employee
9 of a governmental entity. 28 U.S.C. § 1915A. The Court must dismiss a complaint or
10 portion thereof if the prisoner has raised claims that are legally "frivolous or malicious,"
11 that fail to state a claim upon which relief may be granted, or that seek monetary relief
12 from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). This
13 provision is mandatory. The Court has not screened Plaintiff's first amended complaint
14 nor approved it for service. The Court will screen Plaintiff's complaint in due course, and
15 will direct service of Plaintiff's complaint only after the Court has determined that it
16 contains cognizable claims for relief.

17 Based on the foregoing, it is HEREBY ORDERED that:

- 18 1. Plaintiff's motion to set aside the Court's screening order (ECF No. 11) is
19 DENIED, and
- 20 2. The Clerk of Court shall file the proposed amended complaint (ECF No.
21 11-2) as the first amended complaint in this action, with a filing date of
22 November 28, 2014.

23 IT IS SO ORDERED.
24

25 Dated: December 5, 2014

26 /s/ Michael J. Leng
27 UNITED STATES MAGISTRATE JUDGE
28