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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM CECIL THORNTON,
Plaintiff,
v.
DON MORGAN, et al.,
Defendants.

Case No. 1:15-cv-01786-MJS (PC)
ORDER DISMISSING DEFENDANT DON MORGAN WITHOUT PREJUDICE
(ECF No. 20)
ORDER GRANTING PLAINTIFF LEAVE TO FILE SECOND AMENDED COMPLAINT
(ECF No. 21)
THIRTY DAY DEADLINE TO FILE AMENDED COMPLAINT
CLERK TO TERMINATE DEFENDANT DON MORGAN
CLERK TO SEND PLAINTIFF COPY OF ECF No. 18

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff's first amended complaint is awaiting screening by the Court. (ECF No. 18.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 6.) No other parties have appeared.

I. Procedural History

On August 23, 2016, Plaintiff filed a one-paged "Motion to Amend as to Defendant Don Morgan" seeking to delete Don Morgan as a Defendant in his first amended

1 complaint. (ECF No. 20.) The Court construes this filing as a notice of voluntary dismissal
2 of Defendant Don Morgan.

3 On August 29, 2016, Plaintiff filed another one-paged "Motion to Amend," again
4 seeking to remove Defendant Don Morgan but to add Dr. Loan K. Nguyen. (ECF No.
5 21.) Plaintiff also requested a copy of his second amended complaint. No second
6 amended complaint having been filed, the Court construes this as a request for a copy of
7 his first amended complaint and as a motion for leave to file a second amended
8 complaint.

9 **II. Voluntary Dismissal**

10 Under Federal Rule of Civil Procedure 41(a)(1)(A)(i), a plaintiff may dismiss an
11 action without a court order by filing a notice of dismissal before the opposing party
12 serves either an answer or a motion for summary judgment. No other party has yet
13 appeared in this action. Plaintiff's August 23, 2016 notice is sufficient under Rule 41.

14 Therefore, Defendant Morgan will be dismissed from this action without prejudice.

15 **III. Motion to Amend**

16 **A. Legal Standard**

17 A party may amend its pleading once as a matter of course at any time before a
18 responsive pleading is served and up to twenty-one days after service of a responsive
19 pleading. Fed. R. Civ. P. 15(a)(1)(B). Otherwise, a party may amend only by leave of the
20 court or by written consent of the adverse party, and leave shall be freely given when
21 justice so requires. Fed. R. Civ. P. 15(a)(2). Plaintiff has already filed an amended
22 complaint. (ECF No. 18.) No other parties have appeared in this action. Therefore,
23 Plaintiff may not file a second amended complaint without leave of the Court.

24 Local Rule 220 requires that an amended complaint be complete in itself without
25 reference to any prior pleading. As a general rule, an amended complaint supersedes the
26 original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once an amended
27 complaint is filed, the original complaint no longer serves any function in the case.
28 Therefore, in an amended complaint, as in an original complaint, each claim and the

1 involvement of each defendant must be sufficiently alleged.

2 Furthermore, Local Rule 137(c) requires a party to include a copy of the proposed
3 amended complaint with the moving papers when seeking leave to amend.

4 **B. Discussion**

5 Plaintiff's motion to amend is sparse. Plaintiff simply writes:

6 "I respectfully request I be allowed to amend by removing Don Morgan from this
7 claim. I also request to add: Loan K. Nguyen MD to this new amendment. Please
8 also send me a copy of the second amended complaint."

8 (ECF No. 21.)

9 Plaintiff alleges no facts or claims relating to Dr. Nguyen. Plaintiff's filing falls far
10 short of the Local Rule 220 requirement that an amended complaint be "complete in itself
11 without reference to the prior or superseded pleading." Plaintiff also fails to attach a
12 proposed second amended complaint to his motion as required under Local Rule 137(c).
13 Indeed, Plaintiff may believe the Court can turn his first amended complaint into a second
14 amended complaint. It cannot.

15 Despite these procedural deficiencies and considering that Plaintiff's first amended
16 complaint has not yet been screened and no one has appeared in the action, leave to
17 amend would do no harm and apparently will benefit all by replacing a mistakenly named
18 defendant with the correctly named defendant. The Court will grant Plaintiff leave to file a
19 second amended complaint. As Plaintiff's second amended complaint will supersede his
20 first amended complaint, **it must be complete in and of itself** without reference to any
21 prior pleadings. See Loux, 375 F.2d at 57.

22 **IV. Conclusion**

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. Defendant Don Morgan is DISMISSED without prejudice;
- 25 2. The Clerk of Court shall terminate Defendant Don Morgan;
- 26 3. The Clerk of Court shall send Plaintiff a copy of ECF No. 18;
- 27 4. Plaintiff's motion for leave to file a second amended complaint (ECF No. 21) is
28 GRANTED;

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5. Within **thirty (30) days** of this Court's order, Plaintiff must either:
- a. File his second amended complaint; or
 - b. Notify the Court that he does not wish to file a second amended complaint and wishes to proceed with screening of his first amended complaint; and
6. Failure to comply with this order will result in dismissal of this action for failure to obey a court order and failure to prosecute.

IT IS SO ORDERED.

Dated: September 12, 2016

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE