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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEITH ANDERSON FOX,

Plaintiff,

v.

HONORABLE ASHTON B. CARTER,
Secretary of Defense,

Defendants.

No. 1:16-cv-00223-DAD-MJS

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS TO DISMISS
COMPLAINT WITHOUT PREJUDICE

(Doc. No. 4)

Plaintiff Keith Fox, proceeding pro se and in forma pauperis filed a complaint in this action on February 18, 2016. (Doc. No. 1.) The matter was referred to the assigned magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On August 25, 2016, the assigned magistrate judge issued findings and recommendations recommending that plaintiff's complaint be dismissed with leave to amend for failure to comply with Federal Rule of Civil Procedure 8 and failure to state a cognizable claim. (Doc. No. 4.)

These findings and recommendations were served on all parties appearing in this action and included notice that any objections thereto were to be filed within fourteen (14) court days of the date of service. (*Id.* at 5.) On September 9, 2016, plaintiff filed objections to the findings and recommendations in which alleges additional facts, but does not address the extremely limited and cursory nature of the allegations set forth in his original complaint. (Doc. No. 5.) With his

1 objections plaintiff has also submitted exhibits including the agency decision rejecting his claims
2 of discrimination. (*Id.*)

3 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this court has conducted a
4 *de novo* review of the case. Having carefully reviewed the entire file, including plaintiff's
5 objections, the court finds that the findings and recommendations are supported by the record and
6 proper analysis. Plaintiff's original complaint fails to contain sufficient factual allegations in
7 support of his claims. Based on his objections, it appears possible that plaintiff may be able to
8 allege sufficient facts to state cognizable claims based on wrongful termination and workplace
9 discrimination arising from his employment with the Defense Logistics Agency. As such, and as
10 recommended by the assigned magistrate judge, plaintiff will be granted leave to file an amended
11 complaint and to allege additional facts and details in support of his claim.

12 Plaintiff is advised that the court cannot refer to a prior pleading in order to make
13 plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be
14 complete in itself without reference to any prior pleading. This is because, as a general rule, an
15 amended complaint supersedes the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th
16 Cir. 1967). Once an amended complaint is filed, the original pleading no longer serves any
17 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
18 and the involvement of each defendant must be sufficiently alleged.

19 Accordingly:

- 20 1. The findings and recommendations (Doc. No. 4) issued August 25, 2016, are adopted in
21 full;
- 22 2. Plaintiff is granted leave to file an amended complaint within thirty (30) days of the
23 service of this order; and
- 24 3. Failure by plaintiff to comply with this order will result of the dismissal of this action.

25 IT IS SO ORDERED.

26 Dated: January 20, 2017

27 
28 UNITED STATES DISTRICT JUDGE