

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

RUPERT FLOWERS,  
Plaintiff,  
v.  
DAVE DAVEY, et al.,  
Defendants.

Case No. 1:16-cv-01363-BAM (PC)  
ORDER REGARDING PLAINTIFF’S  
MOTION TO SUPPLEMENT PLEADINGS  
(ECF No. 8)  
ORDER TO CLERK OF COURT TO FILE  
AMENDED COMPLAINT

Plaintiff Rupert Flowers (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. Plaintiff initiated this action on September 15, 2016. (ECF No. 1.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Before the Court could screen Plaintiff’s original complaint, he filed the current motion to supplement his complaint under Federal Rule of Civil Procedure 15(d), on November 21, 2016. (ECF No. 8.) Plaintiff’s proposed supplemental complaint was attached to that motion. (Id. at pp. 3-23.)

Rule 15 distinguishes between supplementing and amending a complaint. In an amended complaint, a party may replead or add facts or claims arising prior to or contemporaneously with

1 the allegations of the original complaint. See United States v. Hicks, 283 F.3d 380, 385 (D.C. Cir.  
2 2002); Flaherty v. Lang, 199 F.3d 607, 613 n.3 (2d. Cir. 1999). A supplemental complaint  
3 addresses matters occurring after the original complaint is filed. Fed. R. Civ. P. 15(d). While  
4 leave to permit supplemental pleadings is favored, it cannot be used to introduce a separate,  
5 distinct and new cause of action. See Planned Parenthood of So. Arizona v. Neely, 130 F.3d 400,  
6 402 (9th Cir. 1997); see also, 6A Fed. Prac. & Proc Civ. § 1509 (3d ed.) (noting that leave to file  
7 a supplemental pleading will be denied where “the supplemental pleading could be the subject of  
8 a separate action”).

9 Here, Plaintiff’s proposed complaint is not a supplement; instead, it completely re-states  
10 his original complaint allegations, with a few additional factual allegations that occurred after the  
11 date of his original complaint. The additional allegations concern the same claims raised and  
12 defendants sued in his original complaint. Since it appears Plaintiff intends to supersede his  
13 original complaint in its entirety, the Court construes his motion as a request for leave to amend,  
14 which is granted. The Court will further direct the Clerk of the Court to file Plaintiff’s  
15 supplemental complaint attached to his motion, as a first amended complaint. The Court will  
16 screen Plaintiff’s first amended complaint in due course.

17 Accordingly, the Court HEREBY ORDERS as follows:

- 18 1. Plaintiff’s motion to supplement pleadings, filed November 21, 2016 (ECF No. 8) is  
19 DENIED, as moot; and
- 20 2. The Clerk of the Court shall file Plaintiff’s supplemental complaint (ECF No. 8, pp. 3-  
21 23) on the docket as Plaintiff’s first amended complaint.

22  
23 IT IS SO ORDERED.

24 Dated: December 5, 2016

25 /s/ Barbara A. McAuliffe  
26 UNITED STATES MAGISTRATE JUDGE  
27  
28