

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANDREW MAROWITZ.) Case No. 1:16-cv-1892-DAD-BAM
Plaintiff,)
v.) ORDER GRANTING PLAINTIFF'S
SARAH WILLIAMS, *et al.*) MOTION FOR AN EXTENSION OF TIME
Defendants.) TO FILE A FIRST AMENDED
) COMPLAINT
) (Doc. Nos. 2, 3)
)

Plaintiff Andrew Marowitz (“Plaintiff”) is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff names the County of Mariposa, the Mariposa County Planning Department and several individual Mariposa County employees as defendants.

On October 12, 2017, Plaintiff filed a notice informing the Court that he intends to file a First Amended Complaint on or before November 1, 2017. (Doc. No. 2). Plaintiff further requested that the Court issue summons once his amended complaint is filed. (Doc. No. 2). However, on October 23, 2017, Plaintiff filed a motion for a sixty-day extension of time to file his First Amended Complaint and a request that the Court defer consideration of his case until that First Amended Complaint is filed. (Doc. No. 3). Plaintiff requests additional time to file, in part, so that he may arrange to properly pursue a claim against the State of California in compliance with California's Tort Claims Act. (Doc. No. 3).

Rule 15(a)(1) provides that “[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1). Rule 15(a)(2) provides that “[i]n all other cases, a party may amend its pleading only with the opposing party’s

1 written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Because the Defendants have not
2 yet been served in this action and have therefore not served any responsive pleadings, the Court
3 will grant Plaintiff's request to file a First Amended Complaint, and Plaintiff's original
4 complaint will not be screened or served at this time.

5 Plaintiff is advised that pursuant to 28 U.S.C. § 1915(e)(2), regardless of whether
6 Plaintiff paid the filing fee, the Court is required to conduct an initial review of complaints
7 brought by Plaintiffs proceeding without counsel. The Court must dismiss a complaint or portion
8 thereof if the litigant has raised claims that are legally "frivolous or malicious," that fail to state a
9 claim upon which relief may be granted, or that seek monetary relief from a defendant(s) who is
10 immune from such relief. 28 U.S.C. § 1915(e)(2). Plaintiff is advised that once filed, his First
11 Amended Complaint will be screened pursuant to section 1915(e) in due course. As a result,
12 until the Court has screened the amended complaint and found cognizable claims, any future
13 request for the court to issue summons is premature and will be denied.

14 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
15 each named defendant did that led to the deprivation of Plaintiff's constitutional or other federal
16 rights. Iqbal, 556 U.S. at 676. Plaintiff also must set forth "sufficient factual matter . . . to 'state a
17 claim that is plausible on its face.'" Id. at 678 (quoting Twombly, 550 U.S. at 555).

18 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
19 claims in his second amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no
20 "buckshot" complaints).

21 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
22 Lacey, 693 F.3d at 927. Therefore, Plaintiff's second amended complaint must be "complete in
23 itself without reference to the prior or superseded pleading." Local Rule 220.

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. Plaintiff's motion for an extension of time to file a First Amended Complaint is
26 GRANTED. (Doc. No. 3);

27 2. Plaintiff is granted sixty days from the date of service of this order to file a First
28 Amended Complaint. The amended complaint must bear the docket number assigned to this

case and must be labeled “First Amended Complaint.” If Plaintiff fails to file a First Amended Complaint, the Court may recommend that this case be dismissed for failure to prosecute and/or for failure to comply with court orders. *See* Fed.R.Civ.P. 41(b); *see also* Local Rule 110; and

3. Plaintiff's Notice and Request to Issue Summons is DENIED. (Doc. No. 2).

IT IS SO ORDERED.

Dated: October 26, 2017

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE