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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LIPSEY, JR.,)	1:17-cv-00569-LJO-BAM (PC)
)	
Plaintiff,)	ORDER DISCHARGING AUGUST 1, 2017
)	ORDER TO SHOW CAUSE
vs.)	(ECF No. 24)
)	
DR. REDDY, et al.,)	ORDER DIRECTING CLERK OF COURT
)	TO FILE SECOND AMENDED
Defendants.)	COMPLAINT
)	(ECF No. 25)
)	
)	

Plaintiff Christopher Lipsey is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302.

I. Relevant Procedural Background

On June 6, 2017, the Court screened the complaint pursuant to 28 U.S.C. § 1915A, and found that it stated cognizable claim for excessive force in violation of the Eighth Amendment against Defendants Hernandez, Celedon, and Mancilla for allegedly attacking Plaintiff on March 21, 2016, but failed to state any other claims. (ECF No. 9.) The Court required Plaintiff to either

1 file an amended complaint or notify the Court of his willingness to proceed only on that claim.
2 Plaintiff filed a written notice of willingness to proceed only on that claim. (ECF No. 11.)

3 On June 6, 2017, the undersigned also recommended that certain other claims in the
4 original complaint be dismissed, without prejudice, for improper venue and as improperly joined.
5 (ECF No. 10.) Plaintiff filed a first amended complaint related to those claims. (ECF No. 15.)
6 The assigned District Judge found that the recommendations were supported by the record and
7 proper analysis, and issued an order dismissing the claims for improper venue and as improperly
8 joined. (ECF No. 23.)

9 On June 19, 2017, the Court ordered Plaintiff to submit documents sufficient for the U.S.
10 Marshal to effect service of process on Defendants Hernandez, Celedon, and Mancilla. (ECF No.
11 12.) On June 29, 2017, Plaintiff submitted his Notice of Submission of Documents, which
12 included three summonses and three completed USM-285 forms. However, Plaintiff failed to
13 submit the required copies of the endorsed original complaint. (ECF No. 17.)

14 On August 1, 2017, the Court issued an order to show cause why Plaintiff's case should
15 not be dismissed for Plaintiff's failure to comply with the Court's order and failure to prosecute.
16 (ECF No. 24.) Plaintiff was permitted either to show cause in writing, or to submit four (4)
17 copies of the endorsed complaint.

18 Currently before the Court is Plaintiff's second amended complaint, which is dated
19 August 5, 2017, and was lodged by the Clerk of the Court on August 25, 2017. (ECF No. 35.)

20 **II. Discussion**

21 Plaintiff's second amended complaint restates his allegations against Defendants
22 Hernandez, Celedon, and Mancilla from the original complaint, and omits all other claims which
23 were previously dismissed in this action. Plaintiff also asserts his original claim of a violation of
24 the Eighth Amendment due to excessive force, as well as additional claims under California
25 Civil Code sections 51 and 52.1, and the Bane Act. (ECF No. 25.) Thus, it appears Plaintiff seeks
26 to amend his complaint to add additional claims based on the same events alleged in the original
27 complaint.

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1 Amended and supplemental pleadings are governed by Federal Rule of Civil Procedure
2 15. Rule 15(a)(1) provides as follows:

3 A party may amend its pleading once as a matter of course within:

4 (A) 21 days after serving it, or

5 (B) if the pleading is one to which a responsive pleading is required, 21 days after
6 service of a responsive pleading or 21 days after service of a motion under Rule
7 12(b), (e), or (f), whichever is earlier.

8 Further, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d
9 55, 57 (9th Cir. 1967).

10 In this case, Plaintiff submitted his proposed second amended complaint before service of
11 process was effected on Defendants Hernandez, Celedon, or Mancilla, and before any responsive
12 pleading was filed. Thus, Plaintiff may amend his complaint as a matter of course.

13 Accordingly, it is HEREBY ORDERED:

14 1. The order to show cause issued on August 1, 2017 (ECF No. 24) is discharged.
15 Plaintiff need no longer submit any copies of the original complaint in this action; and

16 2. The Clerk of the Court is hereby directed to file Plaintiff's second amended
17 complaint (ECF No. 25) on the docket. Plaintiff second amended complaint will be screened in
18 due course.

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20 IT IS SO ORDERED.

21 Dated: September 11, 2017

22 /s/ Barbara A. McAuliffe
23 UNITED STATES MAGISTRATE JUDGE
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