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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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10 PAUL JORGENSON,
11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA, et al.,
14 Defendants.

Case No. 1:17-cv-00817-LJO-EPG (PC)

ORDER GRANTING PLAINTIFF LEAVE
TO FILE AMENDED COMPLAINT AND
DENYING MOTION FOR LEAVE TO
SEEK PUNITIVE DAMAGES WITHOUT
PREJUDICE

(ECF NO. 76)

15 Paul Jorgenson (“Plaintiff”) is a federal prisoner proceeding *pro se* and *in forma*
16 *pauperis* in this action.

17 On May 13, 2019, Plaintiff filed a motion for leave to seek punitive damages pursuant
18 to California Code of Civil Procedure § 425.13. (ECF No. 76). As part of that motion,
19 Plaintiff appears to rely on facts that are not present in his currently pending complaint, rather
20 than arguing that the facts as pled support punitive damages. Accordingly, the Court construes
21 the motion as a motion to for leave to amend his complaint.

22 Leave to amend “should freely give leave [to amend] when justice so requires,” Fed. R.
23 Civ. P. 15(a)(2). Accordingly, the Court will grant Plaintiff leave to amend his complaint, if he
24 wishes to add additional allegations to support his claim for punitive damages.

25 If Plaintiff decides to file an amended complaint, he is advised that an amended
26 complaint supersedes the original complaint, Lacey v. Maricopa County, 693 F. 3d 896, 907
27 n.1 (9th Cir. 2012) (*en banc*), and it must be complete in itself without reference to the prior or
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1 superseded pleading, Local Rule 220. Once an amended complaint is filed, the original
2 complaint no longer serves any function in the case. Therefore, in an amended complaint, as in
3 an original complaint, each claim and the involvement of each defendant must be sufficiently
4 alleged. The amended complaint should be clearly and boldly titled "Third Amended
5 Complaint," refer to the appropriate case number, and be an original signed under penalty of
6 perjury.

7 The Court notes that Plaintiff is not being granted leave to amend to reallege claims that
8 were previously dismissed with prejudice (see ECF Nos. 20 & 21).

9 As to Plaintiff's motion for leave to seek punitive damages, as it relies on facts not pled
10 in the complaint, it will be denied without prejudice to Plaintiff refiling the motion along with
11 his Third Amended Complaint.¹

12 Accordingly, IT IS ORDERED that:

- 13 1. Plaintiff has thirty days from the date of service of this order to file a Third
14 Amended Complaint or state that Plaintiff does not wish to amend his
15 complaint;
- 16 2. If Plaintiff files an amended complaint, Defendants have twenty-one days from
17 the date of service of the amended complaint to file responsive pleading(s); and
- 18 3. Plaintiff's motion for leave to seek punitive damages is denied, without
19 prejudice to Plaintiff refiling the motion along with his Third Amended
20 Complaint.

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22 IT IS SO ORDERED.

23 Dated: May 15, 2019

24 /s/ Eric P. Gray
25 UNITED STATES MAGISTRATE JUDGE

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28 ¹ The Court is not deciding at this time whether California Code of Civil Procedure § 425.13 is applicable
in federal actions.