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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

EARNEST S. HARRIS,
Plaintiff,
v.
AGUIRRE, et al.,
Defendants.

No. 1:18-cv-0080 DJC DB P

ORDER

Plaintiff is a state prisoner proceeding with a civil rights action under 42 U.S.C. § 1983. Plaintiff alleges defendants' use of the Guard One security check system caused him sleep deprivation in violation of his Sixth Amendment rights. Before the court is plaintiff's second motion to amend the second amended complaint. Defendants oppose the motion arguing, among other things, that it was premature because a prior motion to amend or supplement the second amended complaint was pending at that time and because plaintiff did not provide a copy of the proposed third amended complaint. In his reply, plaintiff recognizes that he failed to provide a copy of the proposed amended complaint in compliance with court rules and states that, if necessary, he is willing to re-file his motion to do so.

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1 Plaintiff's February 18, 2021 motion to supplement his second amended complaint has
2 now been resolved.¹ (See ECF Nos. 90, 100.) Federal Rule of Civil Procedure 15(a)(1) permits
3 one amendment to a pleading as a matter of course. Because plaintiff has already amended his
4 original complaint, he requires the consent of the opposing parties or leave of court to amend
5 again. Fed. R. Civ. P. 15(a)(2). Local Rule 137(c) states: "If filing a document requires leave of
6 court, such as an amended complaint after the time to amend as a matter of course has expired,
7 counsel shall attach the document proposed to be filed as an exhibit to moving papers seeking
8 such leave and lodge a proposed order as required by these Rules." See also E.D. Cal. R. 183(a)
9 ("All obligations placed on 'counsel' by these Rules apply to individuals appearing in propria
10 persona."). While plaintiff need not file a proposed order, this court will require that he comply
11 with the requirement that he file a proposed amended pleading.

12 Plaintiff is reminded that his amended pleading must be complete in itself without
13 reference to any prior pleading. E.D. Cal. R. 220. Once plaintiff files an amended complaint, his
14 second amended complaint is superseded. For that reason, in the proposed third amended
15 complaint, plaintiff should also include his supplemental Eighth and First Amendment claims
16 against defendant Flores that were permitted in the court's January 17, 2023 order.

17 Accordingly, IT IS HEREBY ORDERED as follows:

18 1. Plaintiff's motion to amend his second amended complaint (ECF No. 93) is denied
19 without prejudice to its renewal; and

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28 ¹ The court construed plaintiff's February 2021 motion as a motion to supplement, rather than
amend, the second amended complaint.

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2. Within 30 days of the date of this order, plaintiff shall file any renewed motion to amend the second amended complaint. If plaintiff does not do so, this court will set a schedule to proceed on plaintiff's second amended complaint.

Dated: July 3, 2023



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:9
DB Prisoner Inbox/Civil Rights/R/harr0080.mta(2)