

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

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RANDY G. LOW,

Plaintiff,

No. CIV S-07-1112 MCE DAD P

vs.

T. WINDSOR, et al.,

Defendants.

ORDER

\_\_\_\_\_/

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has not paid the required filing fee of \$350.00 or filed an application to proceed in forma pauperis. See 28 U.S.C. §§ 1914(a) & 1915(a). Plaintiff will be granted thirty days to pay the filing fee in full or submit a properly completed application to proceed in forma pauperis.

Plaintiff is cautioned that the in forma pauperis application form includes a section that must be completed by a prison official, and the form must be accompanied by a certified copy of plaintiff's prison trust account statement for the six-month period immediately preceding the filing of this action.

On June 11, 2007, plaintiff filed a motion to amend his complaint when he obtains the correct names of certain defendants. Plaintiff is informed that the Federal Rules of Civil

1 Procedure provide that a party may amend his or her pleading “once as a matter of course at any  
2 time before a responsive pleading is served.” Fed. R. Civ. P. 15(a). However, an amended or  
3 supplemental complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57  
4 (9th Cir. 1967). Once an amended pleading is filed, the original pleading no longer serves any  
5 function in the case. Id.; see also E.D. Local Rule 15-220. Should plaintiff seek to amend his  
6 complaint after a responsive pleading is served, he must file a motion and his proposed amended  
7 complaint. Since plaintiff does not seek to amend at this time, the motion will be denied as  
8 premature.

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Plaintiff shall submit, within thirty days from the date of this order, either the  
11 \$350.00 filing fee or a properly completed application to proceed in forma pauperis on the form  
12 provided with this order; plaintiff is cautioned that failure to comply with this order or seek an  
13 extension of time to do so will result in a recommendation that this action be dismissed without  
14 prejudice;

15 2. The Clerk of the Court is directed to send plaintiff an Application to Proceed  
16 In Forma Pauperis By a Prisoner for use in a civil rights action; and

17 3. Plaintiff’s June 11, 2007 motion to amend his complaint is denied as  
18 premature.

19 DATED: June 13, 2007.

20  
21   
22 \_\_\_\_\_  
23 DALE A. DROZD  
24 UNITED STATES MAGISTRATE JUDGE

23 DAD:bb  
24 low1112.3a