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

ALTON E. DEAN,

Plaintiff,

No. 2:09-cv-1339 MCE KJN P

vs.

CAVAGNARO, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel. On April 26, 2010, plaintiff filed a third amended complaint. However, on that same day, this court issued an order screening the second amended complaint, and allowing plaintiff one final opportunity to submit a third amended complaint, along with the Notice of Amendment. Plaintiff's April 26, 2010 third amended complaint does not comport with the court's April 26 order.

In addition, plaintiff was not granted leave to file the third amended complaint. Plaintiff may amend his complaint only once as a matter of right. Fed. R. Civ. P. 15. Plaintiff amended as of right on March 22, 2010. (Dkt. No. 32.) Plaintiff must now seek leave of court prior to amending his complaint, unless ordered to do so.

Moreover, since the filing of the April 26 order, plaintiff has filed a proposed complaint for personal injury and statement of damages, alleging violations similar to those

1 contained in his second amended complaint,¹ but claiming plaintiff to be a “cross-complainant,”
2 and referring to “cross-defendants” Dr. Beregovskaya, who was not specifically named in
3 plaintiff’s second amended complaint, and Under Warden Ken Clark, who was named within the
4 second amended complaint but was not specifically identified as a named defendant in the
5 caption. (May 12, 2010 Proposed Complaint for Personal Injury.)

6 Plaintiff is advised that the instant action is the forum in which to pursue
7 allegations that his civil rights were violated by the defendants named in the second amended
8 complaint, Dr. Beregovskaya and Under Warden Ken Clark. Plaintiff may pursue these
9 allegations in this action, and need not attempt to file a cross-complaint, which is procedurally
10 improper at this time. See Fed. R. Civ. P. 8, 13.

11 On May 12, 2010, plaintiff also filed a notice of punitive damages as to Dr.
12 Beregovskaya, using the same cross-complainant and cross-defendant language. (Id.) Plaintiff
13 previously filed a notice of punitive damages and statement of punitive damages as to defendant
14 Cavagnaro on April 26, 2010 and May 12, 2010. Plaintiff is advised that any request for
15 damages and/or punitive damages should be included in his fourth amended complaint to provide
16 defendants fair notice of these demands. However, plaintiff’s specific statement of damages will
17 not be required until he completes his pretrial statement pursuant to Local Rule 281. Plaintiff
18 will be informed of the deadline for filing the pretrial statement in this court’s scheduling order
19 issued after dispositive motions are resolved. For those reasons, these notices shall be
20 disregarded.

21 Good cause appearing, the court will disregard the third amended complaint filed
22 on April 6, 2010, the same day as the court’s screening order, as well as the proposed complaint
23 for personal injury filed May 12, 2010, and plaintiff will be provided one more opportunity to file

24
25 ¹ The court also refrained from construing the May 12, 2010 filings as a new case
26 because plaintiff failed to pay the filing fee or provide an application to proceed in forma
pauperis.

1 a fourth amended complaint. The Clerk of the Court will be directed to send plaintiff the form
2 for filing a civil rights complaint, and plaintiff will be required to use this form to clearly name
3 each defendant and to articulate his federal claims, as addressed in this court's April 26, 2010
4 order.

5 Plaintiff's notices of damages will also be disregarded. Plaintiff is advised that he
6 must include within his fourth amended complaint any requests for damages and/or punitive
7 damages in order to provide defendants with fair notice of these demands. He need not file a
8 separate demand for damages, but should include his requests in the fourth amended complaint.

9 Finally, on May 12, 2010, plaintiff filed a proposed complaint for personal injury
10 and statement of damages, referencing a "cross-defendant" Kelli Toni, but filed under the
11 heading "In the Superior Court of the State of California in and for the County of Sacramento."
12 (Id.) It is unclear whether plaintiff intended that document to be filed in this court, or whether he
13 intended to submit it to the state court. If plaintiff has federal allegations related to the
14 substantive violations set forth in plaintiff's second amended complaint, plaintiff should include
15 those allegations and the defendants connected therewith in his proposed fourth amended
16 complaint. However, because this filing is addressed to the state court and incorporates
17 information that plaintiff might intend to be included in any proposed fourth amended complaint,
18 this document will also be disregarded. In an abundance of caution, the Clerk of the Court will
19 be directed to return the original to the plaintiff once it has been scanned into the instant docket.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. Plaintiff's May 12, 2010 filings (Dkt. Nos. 37, 38, 39 & 40) are disregarded.
22 2. Plaintiff's April 26, 2010 third amended complaint and notice of punitive
23 damages are disregarded. (Dkt. Nos. 35 & 36.)

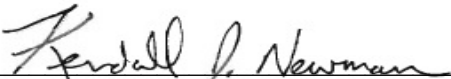
24 3. The Clerk of Court is directed to send plaintiff the form for filing a civil rights
25 complaint. After scanning, the Clerk of the Court shall return the May 12, 2010 proposed
26 complaint bearing the caption Superior Court of the State of California, to the plaintiff.

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4. Within thirty days from the date of this order, plaintiff shall complete the attached Notice of Amendment and submit the following documents to the court:

- a. The completed Notice of Amendment; and
- b. An original and one copy of the Fourth Amended Complaint, filed on the form provided by the Clerk of Court. Plaintiff’s fourth amended complaint shall comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The fourth amended complaint must also bear the docket number assigned to this case and must be labeled “Fourth Amended Complaint.” Failure to file a fourth amended complaint in accordance with this order may result in the dismissal of this action.

DATED: May 24, 2010


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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

ALTON E. DEAN,

Plaintiff,

No. 2:09-cv-1339 KJN P

vs.

CAVAGNARO, et al.,
Defendants.

NOTICE OF AMENDMENT

_____ /

Plaintiff hereby submits the following document in compliance with the court's
order filed _____:

Fourth Amended Complaint using the court's
civil rights form

DATED:

Plaintiff