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

RON WALLS,

Plaintiff,

No. 2:09-cv-1485 KJN P

vs.

B.C. ADAMS, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This action was reassigned to the undersigned on February 9, 2010.¹

On November 2, 2009, the court granted plaintiff’s application to proceed in forma pauperis, but dismissed plaintiff’s Amended Complaint with leave to file a Second Amended Complaint within thirty days. Dkt. No. 10. On December 1, 2009, plaintiff filed two documents, a Motion for Leave to file a Second Amended Complaint (Dkt. No. 12), and a Proposed Second Amended Complaint (Dkt. No. 13 (entitled “Amended Complaint”)). For the following reasons, the court denies plaintiff’s Motion, strikes his Proposed Second Amended

¹ This action is referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), Local General Order No. 262, and E.D. Cal. L.R. (“Local Rule”) 302.

1 Complaint, and again accords plaintiff thirty (30) days within which to file a Second Amended
2 Complaint that conforms to standard pleading requirements and meets the concerns set forth in
3 the court's prior order.

4 Plaintiff's Proposed Second Amended Complaint consists of a cursorily
5 completed form and references an attachment that was not included. Dkt. No. 13. While it is
6 reasonable to infer that the referenced attachment is plaintiff's separately filed Motion for Leave
7 to file a Second Amended Complaint, including its lengthy statement of facts and the supporting
8 exhibits attached thereto, these documents cannot properly be read together to form an acceptable
9 complaint. Not only is plaintiff required to consolidate all relevant statements and documents in
10 one pleading,² but even if these documents were read together the result would fail to comply
11 with fundamental pleading rules, see Fed. R. Civ. P. 8.³

12 While plaintiff's Amended Complaint filed September 28, 2009 (Dkt. No. 7)
13 conformed to the pleading requirements of this court and the Federal Rules, it was dismissed for
14 the substantive reasons set forth in the court's order filed November 2, 2009 (Dkt. No. 9).
15 Plaintiff will be accorded one additional opportunity to file a Second Amended Complaint that
16 meets both substantive and pleading requirements. The "Statement of Fact" set forth in
17 Plaintiff's Motion (Dkt. No. 12) should be incorporated in the new pleading, as well as any other
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19
20 ² Local Rule 220 (Local Rules of Practice for the United States District Court, Eastern
21 District of California) provides that, absent prior approval of the court, "every pleading to which
22 an amendment or supplement is permitted as a matter of right or has been allowed by court order
23 shall be retyped and filed so that it is complete in itself without reference to the prior or
24 superseded pleading. . . . All changed pleadings shall contain copies of all exhibits referred to in
the changed pleading." Local Rule 220(a). Since an amended complaint supersedes a prior
complaint, Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967), "a plaintiff waives all causes of action
alleged in the original complaint which are not alleged in the amended complaint," London v.
Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.1981), and defendants not named in an amended
complaint are no longer defendants, Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.1992).

25 ³ Fed. R. Civ. P. 8(a) requires that a complaint include: (1) the grounds upon which the
26 court's jurisdiction rests; (2) a short and plain statement of each claim showing entitlement to
relief; and (3) a demand for relief.

1 facts that link each named defendant with conduct which plaintiff challenges.⁴ Plaintiff may
2 again verify the truth of his allegations. In addition, plaintiff should attach all pertinent exhibits
3 to his Second Amended Complaint.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. Plaintiff's Motion for Leave to file a Second Amended Complaint (Dkt. No.
6 12), is denied;

7 2. The "Second Amended Complaint" filed December 1, 2009 (Dkt. No. 13) is
8 stricken;


9 3. Pursuant to the court's order filed November 2, 2009 (Dkt. No. 9), plaintiff
10 may file a Second Amended Complaint within thirty (30) days of the filing date of this order;

11 4. Failure timely to file a Second Amended Complaint will result in a
12 recommendation that this case be dismissed.

13 5. The Clerk of Court is directed to send plaintiff one copy each of the following
14 documents: (a) plaintiff's Amended Complaint filed September 28, 2009 (Dkt. No. 7); (b) this
15 court's order filed November 2, 2009 (Dkt. No. 9); and (c) plaintiff's Motion filed December 1,
16 2009 and attached exhibits (Dkt. No. 12).

17 SO ORDERED.

18 DATED: April 1, 2010

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20 
21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

23 wall1485.SAC.amd

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25 _____
26 ⁴ While the court recognizes that plaintiff obtained assistance in preparing and typing this Statement, a subsequently filed pleading need not be typed – plaintiff's handwriting is sufficiently legible for the court's review.