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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BERNARDOS GRAY, JR.,
Plaintiff,
v.
T. VIRGA, et al.,
Defendants.

No. 2:12-cv-3006 KJM AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief pursuant to 42 U.S.C. § 1983. Currently pending before the court are plaintiff’s motion to amend his pending complaint, ECF No. 38, and his motion for default judgment, ECF No. 39. The court will address each motion in turn.

I. Motion to Amend

In a one page motion, plaintiff seeks to amend his original complaint to include a Fourteenth Amendment equal protection claim against Defendants Virga, Nielson, Starnes, and Gam. ECF No. 38 at 1. However, plaintiff failed to submit a proposed first amended complaint along with this motion. See Local Rule 137(c).

A plaintiff may amend the complaint once as a matter of course within twenty-one days after serving it or within twenty-one days after service of an answer or motion under Rule 12(b), (e), or (f), whichever is earlier. See Fed.R.Civ.P. 15(a)(1). When a party may no longer amend a

1 pleading as a matter of right under Rule 15(a)(1), the party must either petition the court for leave
2 to amend or obtain consent from the adverse parties. Fed. R. Civ. P. 15(a)(2); Keniston v.
3 Roberts, 717 F.2d 1295, 1300 (9th Cir. 1983).

4 In the instant case, plaintiff must seek leave of court to amend since defendants were
5 served more than twenty-one days ago and have not consented to the proposed amendment. See
6 Fed. R. Civ. P. 15(a). However, plaintiff's motion to amend is deficient because he neglected to
7 submit a proposed first amended complaint. "If filing a document requires leave of court, such as
8 an amended complaint after the time to amend as a matter of course has expired, counsel shall
9 attach the document proposed to be filed as an exhibit to moving papers seeking such leave and
10 lodge a proposed order as required by these Rules." Local Rule 137(c). While plaintiff is
11 proceeding pro se, he is still required to comply with the Local Rules. It does not suffice to
12 simply describe how plaintiff intends to amend his complaint. Therefore, plaintiff's motion to
13 amend will be denied without prejudice.


14 II. Motion for Default Judgment

15 In this motion plaintiff requests that default judgment be entered because no answer or
16 other defense has been filed by defendants. However, a review of the court's docket indicates
17 that on March 31, 2014, Judge Kimberley Mueller adopted the undersigned's Findings and
18 Recommendations in full and ordered Defendants Virga, Nielson, Starnes and Gam to file an
19 answer within thirty days. As the time to answer has not expired, defendants are not in default
20 and plaintiff's motion should therefore be denied.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff's motion to amend (ECF No. 38) is denied without prejudice; and,
23 2. Plaintiff motion for default judgment (ECF No. 39) is denied.

24 DATED: April 2, 2014

25 
26 ALLISON CLAIRE
27 UNITED STATES MAGISTRATE JUDGE
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