

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 DEXTER BROWN,

12 Plaintiff,

13 v.

14 STATE OF CALIFORNIA, et al.,

15 Defendants.
16

No. 2:12-cv-03045 MCE AC P

ORDER

17 Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42
18 U.S.C. § 1983. Currently before the court are plaintiff's fifth and first amended complaints. ECF
19 Nos. 41, 44.

20 On March 31, 2014, plaintiff filed his fourth amended complaint, which named the State
21 of California as the sole defendant. ECF No. 31. The complaint contained two claims, and
22 though it did not specify the statutory basis for the claims, the factual allegations implicated Title
23 II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 et seq. Id. In Count I,
24 plaintiff alleged that he was being excluded from prison programs and activities because
25 defendant refused to make a reasonable accommodation for his inability to communicate his
26 request for those services in writing. Id. at 3. Count II alleged that plaintiff was subject to some
27 kind of criminal, predatory attack in prison, and that because of his bi-polar disorder, he was
28 denied protection he otherwise would have been afforded. Id. at 4.

1 On October 20, 2014, the court dismissed plaintiff's fourth amended complaint with leave
2 to amend. ECF No. 39. The scope of plaintiff's leave to amend was limited. Plaintiff was
3 permitted to amend Count I to add sufficient details to allow defendant to identify the series of
4 events he was complaining about, such as what accommodations were requested, when and how
5 they were denied, and who was involved. Id. at 5-6. He was also permitted to amend Count II to
6 identify the "criminal predation complaint" and who was involved in denying the requested
7 protection so that defendant could identify the event plaintiff was referring to. Id. at 6. Plaintiff
8 was advised that "the fifth amended complaint must bear the docket number assigned this case
9 and must be labeled 'Fifth Amended Complaint.'" Id.

10 On November 3, 2014, plaintiff filed his fifth amended complaint. ECF No. 41. On
11 January 4, 2015, without explanation, plaintiff filed another document labeled "First Amended
12 Complaint." ECF No. 44. The "first amended complaint" states claims different than those
13 presented in the fourth amended complaint, adds additional defendants, and does not include the
14 State of California as a defendant and therefore exceeds the scope of amendment permitted by the
15 court. The "first amended complaint" also appears to be an abbreviated version of the proposed
16 first amended complaint currently pending in Brown v. Sagireddy, et al., 2:14-cv-00338 JAM AC
17 P at ECF No. 39. "Plaintiffs generally have 'no right to maintain two separate actions involving
18 the same subject matter at the same time in the same court and against the same defendant.' "
19 Adams v. Cal. Dep't of Health Servs., 487 F.3d 684, 688 (9th Cir. 2007) (quoting Walton v.
20 Eaton Corp., 563 F.2d 66, 70 (3d Cir. 1977) (en banc)) (overruled on other grounds by Taylor v.
21 Sturgell, 553 U.S. 880, 904 (2008)).

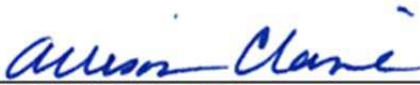
22 Because the "first amended complaint" exceeds the scope of amendment permitted by the
23 court; is duplicative of the proposed amended complaint currently pending in Brown v.
24 Sagireddy, et al., 2:14-cv-00338 JAM AC P; and appears to have been filed in this action by
25 mistake, it will be stricken from the record. The fifth amended complaint will be screened in due
26 course.

27 ///

28 ///

1 Accordingly, IT IS HEREBY ORDERED that the court will strike the “first amended
2 complaint” (ECF No. 44) from the record.

3 DATED: April 10, 2015

4 
5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28