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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE LUIS SEGURA,
Plaintiff,
v.
MICHAEL MCDONALD, et al.,
Defendants.

No. 2:13-cv-0393 AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S. § 1983. On March 22, 2013, plaintiff's complaint was dismissed with leave to amend. ECF No. 5. Plaintiff filed an amended complaint, ECF No. 13, which the court found appropriate for service upon defendants McDonald and Villanueva. ECF No. 13 (order filed June 21, 2013). Upon plaintiff's submission of the documents necessary for service, the undersigned directed the U.S. Marshal to serve the first amended complaint. ECF No. 15 (order filed July 25, 2013). Although no executed waivers of service have been filed, on October 14, 2013 defendant McDonald sought and was granted a 45-day extension of time to file a response to the amended complaint. ECF Nos. 19 (request), 20 (order filed October 28, 2013). On November 1, 2013, plaintiff filed a motion for leave to file a second amended complaint. ECF No. 21

The basis for plaintiff's motion to amend is that he has subsequently acquired information that leads him to believe he has not named the correct defendants in his first amended complaint.

1 ECF No. 21. Defendants Villanueva and McDonald have filed a statement of non-opposition.¹
2 ECF No. 22. The primary basis for their lack of objection to further amendment is their
3 contention that plaintiff's name had been signed on the first amended complaint by a jailhouse
4 lawyer and not by plaintiff himself, rendering it defective. *Id.*, citing Fed. R. Civ. P. 11(a)
5 (requiring that every pleading or written motion be signed by an attorney or, if unrepresented, the
6 party himself) and L.R. 131(b). In his reply, plaintiff invokes the provisions of Fed. R. Civ. P.
7 15(a)(1),² noting defendants' lack of objection to a further amended complaint but contending
8 that he had no need to seek defendants' consent in the present circumstances. ECF No. 23.

9 Plaintiff's motion itself, however, is defective inasmuch as he has failed to provide a
10 proposed second amended complaint for the court to evaluate. As a litigant proceeding in forma
11 pauperis, plaintiff's pleadings are subject to review by this court pursuant to the in forma pauperis
12 statute. See 28 U.S.C. § 1915. Nevertheless, the court will grant plaintiff's unopposed motion
13 for leave to amend under Fed. R. Civ. P. 15(a). The second amended complaint will, of course,
14 be subject to screening by the court. 28 U.S.C. § 1915A(a).

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17 ¹ Although no executed waivers of service have been filed, defendants in their statement of non-
18 opposition to plaintiff's motion to amend assert that "more than twenty-one days have passed
19 since defendants were served. . . ." Therefore, by virtue of the statement of non-opposition made
20 on behalf of both defendants, the court finds that both defendants have appeared, or at a
21 minimum, have waived service.

22 ² Under Fed. R. Civ. P. 15(a) (1):

23 [a] party may amend its pleading once as a matter of course within:

24 (A) 21 days after serving it, or

25 (B) if the pleading is one to which a responsive pleading is
26 required, 21 days after service of a responsive pleading or 21 days
27 after service of a motion under Rule 12(b), (e) or (f), whichever is
28 earlier.

Fed. R. Civ. P. 15(a) (2) applies to "all other cases" and sets forth that:

a party may amend its pleading only with the opposing party's
written consent or the court's leave. The court should freely give
leave when justice so requires.

1 Plaintiff is informed that the court cannot refer to a prior pleading in order to make
2 plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be
3 complete in itself without reference to any prior pleading. This is because, as a general rule, an
4 amended complaint supersedes the original complaint. See Lacey v. Maricopa County, 693 F.3d
5 896, 927 (9th Cir. 2012) ("the general rule is that an amended complaint super[s]edes the
6 original complaint and renders it without legal effect...") Once plaintiff files an amended (or
7 further amended) complaint, the previous pleadings no longer serve any function in the case.
8 Therefore, in an amended complaint as in an original complaint, each claim and the involvement
9 of each defendant must be sufficiently alleged. Although the allegations of this pro se complaint
10 are held to "less stringent standards than formal pleadings drafted by lawyers," Haines v. Kerner,
11 404 U.S. 519, 520 (1972) (per curiam), plaintiff is required to comply with the Federal Rules of
12 Civil Procedure and the Local Rules of the Eastern District of California.

13 Accordingly, IT IS ORDERED that:

- 14 1. Plaintiff's unopposed motion for leave to amend his first amended complaint
15 (ECF No. 21) is granted;
- 16 2. Plaintiff shall file a second amended complaint within thirty days from the date
17 of service of this order; and
- 18 3. Plaintiff's second amended complaint must be signed in accordance with Fed.
19 R. Civ. P. 11(a) and L.R. 131(b).

20 DATED: January 15, 2014

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22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
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