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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT COLEMAN,  
  
                                Plaintiff,  
  
          v.  
  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.,  
  
                                Defendants.

No. 2:13-cv-1021 KJM KJN P

ORDER

Plaintiff is a state prisoner, proceeding without counsel and with a civil rights action pursuant to 42 U.S.C. § 1983. On July 31, 2015, plaintiff filed a document entitled, “Plaintiff’s Leave of the Court to File a Second Supplemental Complaint Pursuant to Fed. R. Civ. P. 15(d).” (ECF No. 68.) Defendants filed an opposition and plaintiff filed a reply. As set forth below, plaintiff’s motion is denied.

Rule 15(d) of the Federal Rules of Civil Procedure provides that:

**Supplemental Pleadings.** On motion and reasonable notice, the court may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. The court may permit supplementation even though the original pleading is defective in stating a claim or defense. The court may order that the opposing party plead to the supplemental pleading within a specified time.

1 Fed. R. Civ. P. 15(d).

2 First, it appears that plaintiff's motion to file a second supplemental complaint was filed in  
3 the wrong case. In his reply, plaintiff states he is "bewildered" how defendants were aware of his  
4 request because "it pertains to a different case. See Coleman v. G. Turner, 2:13-cv-02322  
5 CMK." (ECF No. 71 at 1.) Plaintiff suggests improprieties were taken that enabled defendants  
6 to become aware of his filing. (ECF No. 71 at 1.) However, plaintiff is advised that the court  
7 received two handwritten motions to file a supplemental complaint signed by him. The motion  
8 bearing plaintiff's handwritten case number 2:13-cv-02322 CMK was filed in Coleman v. Turner,  
9 Case No. 2:13-cv-02322 CMK (ECF No. 18) (22 pages). The motion bearing plaintiff's  
10 handwritten case number 2:13-cv-1021 JAM KJN was filed in the instant action. (ECF No. 68 (4  
11 pages).) However, the filing in the instant case bears the caption Coleman v. G. Turner, rather  
12 than the true caption used in this action: Coleman v. California Department of Corrections and  
13 Rehabilitation, et al. (ECF No. 68.) Thus, defendants were appropriately notified of the filing of  
14 the motion in this case. Moreover, plaintiff's reply demonstrates that he intended to file the  
15 motion in Case No. 2:13-cv-02322 CMK rather than the instant action. (ECF No. 71 at 1, 4.)  
16 Plaintiff may not pursue the same motion in two different cases. Thus, plaintiff's motion to file a  
17 second supplemental complaint in the instant action is denied without prejudice. In addition, such  
18 motion is not properly filed because the findings and recommendations have not yet been  
19 adopted.

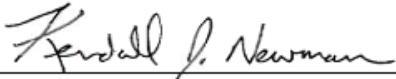
20 Second, in his reply, plaintiff seeks entry of default judgment based on defendants'  
21 alleged failure to answer. (ECF No. 71 at 3.) Plaintiff contends that defendants were directed to  
22 file an answer within twenty-one days from the court's July 21, 2015 order. However, the  
23 findings and recommendations signed July 21, 2015, recommended that defendants be directed to  
24 file an answer within twenty-one days. (ECF No. 67 at 29.) If the district court adopts the  
25 findings and recommendations, defendants will be directed to file an answer within twenty-one  
26 days from the district court's order adopting the recommendations. Thus, defendants are not yet  
27 required to file an answer. Plaintiff's request for entry of default is denied as premature.

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IT IS HEREBY ORDERED that plaintiff's motion for leave to file a second supplemental complaint (ECF No. 68), and his request for entry of default (ECF No. 71), are denied without prejudice.

Dated: September 18, 2015

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

cole1021.mta