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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MABLE STEINER,
Plaintiff,
v.
VERIZON WIRELESS,
Defendant.

No. 2:13-cv-1457-JAM-KJN PS

ORDER

Plaintiff Mable Steiner, proceeding without counsel, commenced this action on July 19, 2013. (ECF No. 1.)¹ After the court denied plaintiff's application to proceed in forma pauperis without prejudice, and granted plaintiff an opportunity to either pay the filing fee or file an amended application to proceed in forma pauperis, plaintiff paid the filing fee. (ECF No. 3.) Accordingly, on August 7, 2013, the Clerk of Court issued plaintiff with process papers, and an initial scheduling conference for the case was set for January 23, 2014, at 10:00 a.m., in Courtroom No. 25. (ECF Nos. 4, 5.) In the August 7, 2013 order setting the initial scheduling conference, the court also directed plaintiff to complete service of process within 120 days, i.e., by December 5, 2013. (ECF No. 5.)

¹ This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 Subsequently, plaintiff filed a first amended complaint and a second amended complaint
2 on September 19, 2013 and October 2, 2013, respectively. (ECF Nos. 6, 7.) Thereafter, on
3 October 11, 2013, plaintiff filed a motion to amend the complaint and a motion for extension of
4 time to serve any defendant(s) with process. (ECF No. 8.) In particular, plaintiff requests leave
5 to amend her complaint to change the names of defendants and seeks an extension of 30 days to
6 serve any defendant(s) with process due to illness. (Id.)

7 Motion for Leave to Amend

8 Federal Rule of Civil Procedure 15 provides, in part, that “[a] party may amend its
9 pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is
10 one to which a responsive pleading is required, 21 days after service of a responsive pleading or
11 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. In all other
12 cases, a party may amend its pleading only with the opposing party’s written consent or the
13 court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P.
14 15(a)(1)-(2).

15 In this case, plaintiff properly amended her original complaint once as a matter of course
16 when she filed a first amended complaint on September 19, 2013, because plaintiff had not yet
17 served any defendant(s). (ECF No. 6.) However, plaintiff’s second amended complaint was
18 improperly filed, because she was required to seek leave of court prior to filing a second amended
19 complaint. Plaintiff now seeks leave to amend her complaint again. In light of plaintiff’s pro se
20 status, the early posture of this case, and because it appears that no defendant has yet been served
21 with process, the court grants plaintiff leave to file a third amended complaint within 21 days.
22 Plaintiff must then serve the third amended complaint on any named defendant(s). Plaintiff is
23 cautioned that, going forward, she must seek leave of court pursuant to the Federal Rules of Civil
24 Procedure and the court’s Local Rules² if she wishes to amend her complaint again. Future
25 unauthorized amended complaints may be summarily stricken.

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28 ² A copy of the court’s Local Rules can be obtained from the Clerk’s Office or on the court’s
website at <http://www.caed.uscourts.gov>.

1 Plaintiff is further informed that the court cannot refer to a prior complaint in order to
2 make plaintiff's third amended complaint complete. Local Rule 220 requires that an amended
3 complaint be complete in itself without reference to any prior pleading. As a general rule, an
4 amended complaint supersedes the original complaint or prior amended complaints, and once the
5 amended complaint is filed, the original complaint or prior amended complaints no longer serve
6 any function in the case.

7 Motion for an Extension of Time to Complete Service of Process

8 As noted above, plaintiff also requests a 30-day extension to serve any defendant(s) with
9 process. However, under the court's present order, plaintiff still has until December 5, 2013, to
10 complete service of process. Therefore, no extension is warranted at this time.

11 For the foregoing reasons, IT IS HEREBY ORDERED that:

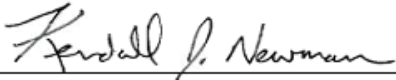
- 12 1. Plaintiff's motion for leave to amend her complaint (ECF No. 8) is GRANTED.
- 13 2. For purposes of clarity, the original complaint, first amended complaint, and second
14 amended complaint (ECF Nos. 1, 6, 7) are DISMISSED with leave to amend.
- 15 3. Plaintiff shall file a third amended complaint in accordance with this order within 21
16 days. The third amended complaint shall be captioned "Third Amended Complaint"
17 and shall make clear who the named defendants are and what specific claims are
18 asserted against each defendant(s).
- 19 4. Plaintiff's motion for an extension of time to complete service of process (ECF No. 8)
20 is DENIED WITHOUT PREJUDICE.
- 21 5. Plaintiff shall complete service of process on any defendants named in her third
22 amended complaint no later than December 5, 2013. If plaintiff names additional
23 defendants in the third amended complaint, plaintiff shall obtain additional
24 summonses from the Clerk of Court, as necessary.
- 25 6. Failure to file a third amended complaint by the required deadline may result in a
26 recommendation that the action be dismissed pursuant to Federal Rule of Civil
27 Procedure 41(b). Additionally, failure to complete service of process on any
28 defendant(s) by the required deadline may result in a recommendation that the action

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be dismissed pursuant to Rule 4(m) and/or Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

Dated: October 17, 2013


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE