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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PERRY ROMANO,  
Plaintiff,  
v.  
US DIRECT EXPRESS,  
Defendant.

No. 2:14-cv-1726 TLN CKD PS

ORDER

Plaintiff is a state prisoner proceeding in this action pro se and in forma pauperis. This proceeding was referred to this court by Local Rule 302(c)(21).

By order filed October 9, 2014, plaintiff was ordered to show cause why this action should not be dismissed for lack of subject matter jurisdiction. Plaintiff has filed a response in which he states this action is properly subject to diversity jurisdiction.<sup>1</sup> Plaintiff does not specifically allege the citizenship of defendant; however, it appears from the pleadings that defendant may be a corporation located in Texas. Although the parties may be diverse, it is questionable whether plaintiff can in good faith meet the amount in controversy. Plaintiff claims \$1,000,000 in damages for a simple credit card dispute. On its face, this exaggerated demand appears to be

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<sup>1</sup> Plaintiff also contends federal question jurisdiction is appropriate because defendant violated his constitutional rights. Plaintiff cannot state a claim under 42 U.S.C. § 1983 because defendant is not a state actor. Plaintiff's contention with respect to federal question jurisdiction is therefore meritless.

1 made in bad faith. See Diefenthal v. C.A.B., 681 F.2d 1039, 1052 (5th Cir. 1982) (“[A] court  
2 would be remiss in its obligations if it accepted every claim of damages at face value, no matter  
3 how trivial the underlying injury.”). The complaint will therefore be dismissed with leave to  
4 amend. In any amended complaint, plaintiff must allege with specificity the basis for diversity  
5 jurisdiction, including the citizenship of the parties and a good faith claim for the amount in  
6 controversy and the basis therefor.

7 Plaintiff is informed that the court cannot refer to a prior pleading in order to make  
8 plaintiff’s amended complaint complete. Local Rule 15-220 requires that an amended complaint  
9 be complete in itself without reference to any prior pleading. This is because, as a general rule,  
10 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th  
11 Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any  
12 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim  
13 and the involvement of each defendant must be sufficiently alleged.

14 Plaintiff has requested the appointment of counsel. The United States Supreme Court has  
15 ruled that district courts lack authority to require counsel to represent indigent prisoners in  
16 § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain  
17 exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to  
18 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.  
19 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court does not find  
20 the required exceptional circumstances. Plaintiff’s request for the appointment of counsel will  
21 therefore be denied.

22 Accordingly, IT IS HEREBY ORDERED that:

23 1. Plaintiff’s complaint is dismissed;


24 2. Plaintiff is granted thirty days from the date of service of this order to file an amended  
25 complaint that complies with the requirements of the Federal Rules of Civil Procedure, and the  
26 Local Rules of Practice; the amended complaint must bear the docket number assigned this case  
27 and must be labeled “Amended Complaint”; plaintiff must file an original and two copies of the

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1 amended complaint; failure to file an amended complaint in accordance with this order will result  
2 in a recommendation that this action be dismissed; and

3 3. Plaintiff's request for appointment of counsel (ECF No. 12) is denied.

4 Dated: October 20, 2014



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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