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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SEAN O’NEAL,  
Plaintiff,  
v.  
AUGUST JOHNSON, et al.,  
Defendants.

No. 2:14-cv-2374 DAD PS

ORDER

This matter came before the court on August 7, 2015, for the hearing of plaintiff’s motion to add defendants.<sup>1</sup> Plaintiff’s motion was granted, plaintiff’s proposed sixth amended complaint filed July 20, 2015 was deemed the operative pleading and plaintiff was ordered to serve the sixth amended complaint on the newly named defendants. (Dkt. No. 42.)

On August 17, 2015, plaintiff filed a motion for further leave to amend and set the matter for hearing before the undersigned on September 18, 2015. (Dkt. No. 47.) Therein, plaintiff states that again “correction is necessary to correct, add claims, drop defendants, restate an inadequately pleaded claim, request additional relief, and alter theory of claim,” and “fix the 1983 claim against Officer August Johnson.” (Id. at 1.) In this regard, plaintiff asserts that because “the Court told the plaintiff he could not sue his public defender,” that plaintiff “was under the

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<sup>1</sup> The parties currently before the court have previously consented to Magistrate Judge jurisdiction over this action pursuant to 28 U.S.C. § 636(c)(1). (Dkt. No. 16.)

1 impression that he was to drop the public defender.” (Id. at 2.) Moreover, plaintiff claims that  
2 “[o]n August 7, 2015 the Plaintiff talked about how it was necessary to leave (sic) to amend  
3 complaint ‘Docket #33’ to fix the 1983 Claim,” and that plaintiff “was told he was free to amend  
4 his complaint and fix complaint Docket #33.” (Id.) However, “instead Docket #36 was granted,”  
5 and “these two proposed amended complaint (sic) were very different.” (Id.)

6 Plaintiff is mistaken. As a result of the court’s order after the August 7, 2015 hearing,  
7 plaintiff was not free to amend his complaint further. Instead, the court granted him leave to  
8 amend to proceed on the proposed sixth amended complaint plaintiff filed on July 10, 2015, (Dkt.  
9 No. 33), and again on July 20, 2015. (Dkt. No. 36.) Plaintiff was told at the August 7, 2015  
10 hearing and in the August 7, 2015 order after hearing that “[n]o further amendment to the sixth  
11 amended complaint will be permitted in this action.” (Dkt. No. 42 at 1.)

12 With respect to plaintiff’s statement that the proposed sixth amended complaint plaintiff  
13 filed on July 10, 2015, is “very different” from the proposed sixth amended complaint plaintiff  
14 filed on July 20, 2015, it was plaintiff who drafted and filed these documents, identifying them as  
15 his “PROPOSED 6<sup>TH</sup> AMENDED COMPLAINT,” (Dkt. No. 33 at 3), and his “PROPOSED 6<sup>TH</sup>  
16 AMENDED COMPLAINT AMENDED.” (Dkt. No. 36 a 6.) In the future, plaintiff should avoid  
17 filing multiple pleadings and should instead exercise care and deliberation in his filings.  
18 Nonetheless, plaintiff will be provided an opportunity to elect which of his proposed sixth  
19 amended complaints he wishes to proceed on.

20 Accordingly, IT IS ORDERED that:

- 21 1. Plaintiff’s August 17, 2015 motion for leave to amend (Dkt. No. 47) is denied;
- 22 2. The September 18, 2015 hearing of plaintiff’s motion for leave to amend is dropped  
23 from the court’s calendar; and

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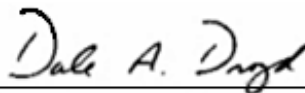
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1           3. Within 7 days of the date of this order plaintiff shall file a writing identifying whether  
2 he wishes to proceed on the proposed sixth amended complaint he filed on July 10, 2015 (Dkt.  
3 No. 33) or the proposed sixth amended complaint he filed on July 20, 2015. (Dkt. No. 36.)

4 Dated: August 28, 2015

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7 DALE A. DROZD  
8 UNITED STATES MAGISTRATE JUDGE

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