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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 KJN PS (TEMP)

ORDER

This matter came before the previously assigned Magistrate Judge on August 7, 2015, for the hearing of plaintiff’s motion to add defendants.¹ On August 10, 2015, plaintiff was granted leave to amend, the proposed sixth amended complaint filed July 20, 2015 (Dkt. No. 36) 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 in which he argued that “[o]n August 7, 2015 the Plaintiff talked about how it was necessary to leave (sic) to amend complaint ‘Docket #33’ to fix the 1983 Claim,” and that plaintiff “was told he was free to amend his complaint and fix complaint Docket #33,” however, “instead Docket #36 was granted,” and “these two proposed amended complaint (sic) were very different.” (Dkt. No. 47 at 2.)

¹ On November 6, 2015, this action was reassigned from the previously assigned Magistrate Judge to the undersigned. (Dkt. No. 61.)


1 On August 28, 2015, the previously assigned Magistrate Judge issued an order denying
2 plaintiff's motion for further leave to amend and ordering plaintiff to inform the court as to
3 whether he wished to proceed on the proposed sixth amended complaint he filed on July 10, 2015
4 (Dkt. No. 33), or the proposed sixth amended complaint he filed on July 20, 2015 (Dkt. No. 36).
5 On September 3, 2015, plaintiff filed a response stating that he "has decided to go with the
6 proposed sixth amended complaint filed on July 10, 2015 (Dkt. No. 33)." (Dkt. No. 51.)

7 The proposed sixth amended complaint filed on July 10, 2015 will, therefore, be deemed
8 the operative pleading in this action. For purposes of clarity, that document will be deemed the
9 eighth amended complaint. Moreover, because several defendants have moved to dismiss the
10 proposed sixth amended complaint filed July 20, 2015, those motions to dismiss will be denied
11 without prejudice to renewal.

12 Accordingly, IT IS ORDERED that:

- 13 1. The proposed sixth amended complaint filed on July 10, 2015 (Dkt. No. 33) is
14 deemed to be the eighth amended complaint and the operative pleading in this action;
- 15 2. Defendants' September 8, 2015 motion to dismiss (Dkt. No. 52) and November
16 30, 2015 motion to dismiss (Dkt. No. 64) are denied without prejudice to renewal; and
- 17 3. All defendants appearing in this action shall file a responsive pleading to the
18 eighth amended complaint within twenty-one (21) days of the date of this order.

19 Dated: December 2, 2015

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22 KENDALL J. NEWMAN
23 UNITED STATES MAGISTRATE JUDGE
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