

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KASEY F. HOFFMANN,
Plaintiff,
v.
LASSEN COUNTY, et al.,
Defendants.

No. 2:16-cv-0946 JAM AC (PS)

ORDER

Plaintiff is proceeding in this action pro se. The action was accordingly referred to the magistrate judge for pretrial proceedings by E.D. Cal. R. (“Local Rule”) 302(c)(21). Although it appears that plaintiff is an inmate in a county jail, this lawsuit does not challenge conditions of confinement.

On December 28, 2016, the court screened plaintiff’s Third Amended Complaint, and ordered it to be served on defendants. ECF No. 13. On the same day, plaintiff filed a Fourth Amended Complaint and an accompanying “Affidavit of Facts.” ECF No. 15, 15-1. It appears that the court’s order and the plaintiff’s Fourth Amended Complaint crossed each other in the mail. As such, the court does not consider the Fourth Amended Complaint to be plaintiff’s response to the court’s screening order, which gave plaintiff thirty days to either proceed with his Indian Child Welfare Act (“ICWA”) claims alone, or amend his complaint. See ECF No. 13.

///

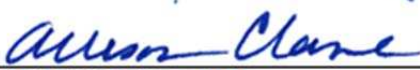
1 The court will order the Fourth Amended Complaint stricken from the docket for the reasons that
2 follow.

3 The Fourth Amended Complaint is identical to the Third Amended Complaint (other than
4 the date line). Plaintiff's filing of an "affidavit" with his Fourth Amended Complaint does not
5 change the result. Although Fed. R. Civ. P. 10(c) permits a "written instrument" to be attached to
6 a complaint, plaintiff's "affidavit" does not qualify under that Rule. Plaintiff's "affidavit" is
7 simply an unsworn statement, and therefore is not a proper affidavit or declaration. Even if it
8 were in proper format, the "affidavit" does not "form the basis of the complaint" – it post-dates
9 the complaint, and the complaint makes no reference to it. See United States v. Ritchie, 342 F.3d
10 903, 908 (9th Cir. 2003) ("[a]ffidavits and declarations such as the Hieronymus declaration are
11 not allowed as pleading exhibits unless they form the basis of the complaint"). Accordingly, the
12 "affidavit" will be stricken. Since the court has already screened the Third Amended Complaint,
13 the court will order the Fourth Amended Complaint to be stricken from the docket, to avoid any
14 confusion about which document is the operative complaint.¹

15 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 16 1. The Clerk of the Court shall STRIKE plaintiff's Fourth Amended Complaint and
17 accompanying "affidavit" (ECF No. 15, 15-1), from the docket; and
18 2. The Third Amended Complaint (ECF No. 12) is the operative complaint.

19 DATED: December 29, 2016

20 
21 ALLISON CLAIRE
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26

27 ¹ In addition, while plaintiff has the right to amend "once as a matter of course" within certain
28 time constraints, this would be plaintiff's fourth amendment, and accordingly it can only be done
with leave from the court. See Fed. R. Civ. P. 15(a) (emphasis added).