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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGER GIFFORD,
Plaintiff,
v.
ROBERT PUCKETT, SR., et al.,
Defendants.

No. 2:16-cv-0955 KJM GGH

ORDER

Plaintiff seeks an extension of time of 60 days to file his opposition to Motions to Dismiss pending on this Court’s May 18, 2017, hearing calendar. He also seeks permission to take pre-Answer discovery.

PROCEDURAL HISTORY

Plaintiff filed his 84 page complaint together with 40 pages of exhibits alleging civil rights violations by several individuals and institutional defendants on May 5, 2016, ECF No. 1, together with a Motion to Proceed In Forma Pauperis. ECF No. 2. He was granted IFP status by Magistrate Judge Allison Claire on May 26, 2016. ECF No. 3. In her order granting that status, the Magistrate Judge also dismissed the complaint and gave the plaintiff 30 days to amend in accordance with instructions given him in the Order. Id.

On June 15, 2016, plaintiff filed both objections to the court’s order, ECF No. 4 and a First Amended Complaint. ECF No. 5. On June 20, 2016, Magistrate Judge Claire issued an

1 Order dismissing this Complaint with 30 days leave to amend noting that the Amendment was
2 “nearly identical” to the original Complaint, again providing guidance on how to plead
3 sufficiently *and limited any amendment filed to 25 pages in length.* ECF No. 6.

4 On July 5, 2016 plaintiff filed Objections to the Order in which he declined to amend his
5 complaint which he argued met the requirements of Federal Rule of Civil Procedure 8, upon
6 which the Magistrate based her order in principal part, ECF No. 7, and on August 24, 2016 the
7 Magistrate granted plaintiff an additional 30 days to file his amendment, and imposing the same
8 25 page limit on an further pleading he chose to file. ECF No. 8.

9 On September 20, 2016 plaintiff sought to withdraw his request for IFP status and paid the
10 court’s filing fee, ECF No. 1. On December 5, 2016, the Magistrate Judge granted permission to
11 withdraw from IFP status and gave the plaintiff an additional 30 days to file a Second Amended
12 Complaint. ECF No. 11. On December 29, 2016 plaintiff sought a 30 day extension of time to
13 file his second amended complaint, ECF No. 12, and that request was granted by an Order issued
14 January 4, 2017. ECF No. 13.

15 On February 1, 2017 plaintiff submitted his Second Amended Complaint which ran to 148
16 pages. ECF No. 14, and summons were issued to the named defendants. ECF No. 15. On March
17 21, 2017, Motions to Dismiss were served by counsel for various groups of defendants. ECF
18 Nos. 28, 32, 34, 35 and 36.¹

19 On March 29, 2017 District Judge Kimberly Mueller issued an order that transferred this
20 case from Judge Nunley’s docket to hers and from Magistrate Judge Claire’s docket to the
21 undersigned. ECF No. 45.² On the same day, a new Motion to Dismiss the Second Amended
22 Complaint based upon which summonses had been issued which included a 22 page
23 Memorandum of Points and Authorities and 179 pages for which defendants sought Judicial

24 ///

25 ¹ On March 24, 2017 plaintiff filed Requests for Entry of Default Judgment against various
26 groups of defendants, presumably before he received their Motions to Dismiss. ECF Nos. 40, 41,
42, 43 and 44.

27 ² The related case was Harrell v. Hornbrook CSD, et al., 14-1595 KJM GGH; the order relating
28 these two cases utilized the 14-1595 caption. Most of the order, ECF No. 45, involved the Harrell
case.

1 Notice. (ECF No. 46) It is this Motion that is the subject of plaintiff's request for an additional
2 60 days to respond, and for early discovery.

3 *DISCUSSION*

4 *MOTION FOR EXTENSION OF TIME*

5 This motion will be denied as the District Court's Order of March 29, 2017 at ECF No. 45
6 effectively dismissed the presently pending Amended Complaint and directed a new filing not to
7 exceed 25 pages. Therefore there is no pending complaint upon which this court may act.

8 *MOTION FOR EARLY DISCOVERY*

9 For the same reason as the extension of time request is denied, this Motion will also be
10 denied, i.e., there is no pending Complaint as to which any discovery is appropriate at this time.

11 *PENDING MOTIONS TO DISMISS AND STRIKING THE SECOND AMENDED COMPLAINT*

12 The Second Amended Complaint, as it pertains to page length, is in direct violation of
13 Magistrate Judge Claire's orders. This court will not ignore this violation and adjudicate the
14 merits of the Second Amended Complaint. The Second Amended Complaint in this action is
15 stricken with one more opportunity to comply with the previous order limiting any amended
16 complaint to 25 pages. An amended complaint not exceeding 25 pages shall be filed no later than
17 April 28, 2017. No further extensions of time will be approved, and failure to timely file the
18 amended complaint as ordered herein shall result in a recommendation that the entire motion be
19 dismissed.

20 As the undersigned has stricken the Second Complaint and ordered the filing of a third
21 amended complaint, the motions to dismiss are vacated from calendar.

22 In light of the foregoing, IT IS THEREFOR ORDERED:

- 23 1. Plaintiff's Motion for Extension of Time to respond to the motions to dismiss,
24 ECF No. 48, is DENIED as the lack of an operative complaint moots the motions;
- 25 2. Plaintiff's Motion for Early Discovery contained within ECF No. 48, is DENIED
26 as there is no operative complaint pending;
- 27 3. The matters set forth in paragraphs 1 and 2 from the court's calendar of May 18,
28 2017 are vacated from calendar;

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4. All Motions to Dismiss, ECF Nos. 28, 32, 34, 35, 36 and 46 are vacated from calendar as moot.

5. The default entered regarding Lee Buckley, ECF No. 52, is stricken as no default should be entered on the now stricken Second Amended Complaint filed in violation of the court's previous orders.

IT IS SO ORDERED.

Dated: April 6, 2017

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE