

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

STEVEN VLASICH,  
Plaintiff,  
v.  
M. BOBBALA, et al.,  
Defendants.

No. 2:17-cv-1241-JAM-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel. On April 24, 2019 and after screening plaintiff’s amended complaint (ECF No. 11), the court determined that service was appropriate for defendants Bobbala, Sahota, Arya, and Soltanian. ECF No. 15. The court directed plaintiff to submit documents for service of those defendants. *Id.* at 4-5. On May 8, 2016, plaintiff filed a “Request to Strike Second Amended Complaint or Motion for Leave to File a Third Amended Complaint.” ECF No. 16.<sup>1</sup> Therein, plaintiff argues that he inadvertently

//////

---

<sup>1</sup> The action currently proceeds on plaintiff’s first amended complaint (ECF No. 11); there is no second amended complaint. Nevertheless, the body of the filing makes clear that he seeks to strike or amend the first amended complaint. ECF No. 16 at 1 (“Plaintiff requests that the court either grant him leave to submit a second amended complaint to include Defendant Ilya or strike the first amended complaint.”).

1 excluded defendant Ilya from his amended complaint. *Id.* at 1. He also claims that he has, since  
2 the filing of this action, complied with the California Torts Claims Act.<sup>2</sup> *Id.*

3 In light of those contentions, the court will afford plaintiff another opportunity to amend  
4 his complaint. He is cautioned that any amended complaint must identify as a defendant only  
5 persons who personally participated in a substantial way in depriving him of his constitutional  
6 rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the  
7 deprivation of a constitutional right if he does an act, participates in another's act or omits to  
8 perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also  
9 include any allegations based on state law that are so closely related to his federal allegations that  
10 "they form the same case or controversy." *See* 28 U.S.C. § 1367(a).

11 The amended complaint must also contain a caption including the names of all defendants.  
12 Fed. R. Civ. P. 10(a).

13 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*  
14 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

15 Any amended complaint must be written or typed so that it so that it is complete in itself  
16 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended  
17 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the  
18 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114  
19 F.3d 1467, 1474 (9th Cir. 1997) (the "amended complaint supersedes the original, the latter  
20 being treated thereafter as non-existent.") (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.  
21 1967)).

22 Any amended complaint should be as concise as possible in fulfilling the above  
23 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual  
24 background which has no bearing on his legal claims. He should also take pains to ensure that his  
25 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing  
26

---

27 <sup>2</sup> In a screening order addressing the initial complaint, the court noted that plaintiff had  
28 failed to plead cognizable state law tort claims insofar as he did not plead compliance with the  
California Torts Claims Act. ECF No. 8 at 5.

1 and organization. Plaintiff should carefully consider whether each of the defendants he names  
2 actually had involvement in the constitutional violations he alleges. A “scattershot” approach in  
3 which plaintiff names dozens of defendants will not be looked upon favorably by the court.

4 Accordingly, it is ORDERED that:

5 1. Plaintiff’s “Request to Strike Second Amended Complaint or Motion for Leave to File  
6 a Third Amended Complaint” (ECF No. 16) is GRANTED;

7 2. Plaintiff must file his second amended complaint within 30 days from the date of  
8 service of this order; and

9 3. Failure to file an amended complaint that complies with this order may result in the  
10 dismissal of this action for the reasons stated herein.

11 DATED: September 24, 2019.

12   
13 EDMUND F. BRENNAN  
14 UNITED STATES MAGISTRATE JUDGE

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28