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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

DARON MICHAEL OLIVER,

Plaintiff,

v.

DUANE SHELTON, et al.,

Defendants.

No. 2:18-CV-1809-KJM-DMC

ORDER

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is defendants’ motion to dismiss (ECF No. 38), currently set for hearing before the undersigned in Redding, California, on August 28, 2019.

Defendants’ pending motion challenges the allegations contained in plaintiff’s first amended complaint filed on June 3, 2019 (ECF No. 34).¹ This action, however, now proceeds on a superseding pleading, specifically a second amended complaint filed as of right on June 17, 2019 (ECF No. 36). See Fed. R. Civ. P. 15(a)(1)(A), (B). Because defendants’ current motion to dismiss challenges a pleading which has been superseded by the filing of the second amended complaint, defendants’ motion will be stricken and the August 28, 2019, hearing will be vacated.

¹ The first amended complaint was filed with leave of court following the court’s ruling on defendants’ motion to dismiss plaintiff’s original complaint. See ECF No. 31 (April 23, 2019, district judge order granting defendants’ motion to dismiss and directing plaintiff to file a first amended complaint).

1 In so doing, the court expresses no opinion on the sufficiency of plaintiff's current allegations or
2 the merits of defendants' arguments. If defendants wish to challenge the June 17, 2019, second
3 amended complaint, they may do so by way of a new motion to dismiss.

4 A review of the docket also reflects that plaintiff filed a third amended complaint
5 on July 8, 2019 (ECF No. 40). Following amendment as of right, a party's pleadings may only be
6 amended upon leave of court or stipulation of all the parties. See Fed. R. Civ. P. 15(a)(2).

7 Because plaintiff has neither obtained leave of court nor a stipulation signed by all parties to file a
8 third amended complaint, it will also be stricken.

9 Finally, the court notes that defendant Mel has filed an answer to plaintiff's June 3,
10 2019, first amended complaint. Because the June 3, 2019, first amended complaint is not the
11 operative pleading in this case, defendant Mel's answer to that pleading is of no moment.
12 Defendant Mel will be directed to file a response to plaintiff's June 17, 2019, second amended
13 complaint.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. This action currently proceeds on plaintiff's June 17, 2019, second
16 amended complaint;
- 17 2. Defendants' motion to dismiss (ECF No. 38), challenging the June 3, 2019,
18 first amended complaint, is stricken and terminated as a pending motion;
- 19 3. The hearing scheduled for August 28, 2019, is vacated;
- 20 4. Plaintiff's July 8, 2019, third amended complaint is stricken as having been
21 improperly filed; and
- 22 5. Defendants shall file a response to plaintiff's June 17, 2019, second
23 amended complaint within 30 days of the date of this order.

24
25 Dated: August 7, 2019



26 DENNIS M. COTA
27 UNITED STATES MAGISTRATE JUDGE
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