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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY T. RIVERA,
Plaintiff,
v.
LAWRENCE LIVERMORE NATIONAL
SECURITY, LLC, et al.,
Defendants.

Case No. 16-cv-00304-PJH

**ORDER GRANTING MOTION TO
STRIKE; DENYING AS MOOT MOTION
TO DISMISS**

Dkt. No. 54

Before the court is Lawrence Livermore National Security, LLC's ("LLNS") motion to dismiss or strike portions of plaintiff Anthony Rivera's amended complaint. Dkt. 54. The matter is fully briefed and suitable for decision without oral argument. Accordingly, the hearing set for September 28, 2016 is hereby VACATED. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS the motion to strike in part, and DENIES the motion to dismiss as moot.

On June 2, 2016, the court dismissed with prejudice Rivera's first claim for wrongful discharge as time-barred, and dismissed LLNS as a defendant in this case. Dkt. 38. Under this order, Rivera was not permitted to re-plead his wrongful discharge claim or to again name LLNS as a defendant in his amended complaint.¹ Dkt. 38. The court must therefore DENY the motion to dismiss, as moot. The claim against LLNS is already dismissed, and LLNS is terminated as a defendant, per the court's prior order.

¹ The law has been clear for years now that re-pleading dismissed claims is not necessary to preserve appeal rights. Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012).

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In light of the above, the motion to strike must be GRANTED, in relevant part. The court hereby STRIKES the following portions of the amended complaint (Dkt. 51):

- (1) From the case caption, the words "Lawrence Livermore National Security LLC" (i.e., the naming of LLNS as a defendant);
- (2) From paragraph 1, the words "against Lawrence Livermore National Security LLC, for wrongful discharge in violation of public policy";
- (3) From paragraph 5, the word "defendant";
- (4) The entirety of paragraphs 42–52 (the first cause of action).

Because the factual allegations in paragraphs 11 through 36 potentially relate to Rivera's non-dismissed claims, the court will DENY the motion to strike these paragraphs from the amended complaint.

The clerk shall terminate LLNS as a defendant in this matter.

IT IS SO ORDERED.

Dated: September 19, 2016



PHYLLIS J. HAMILTON
United States District Judge