

United States District Court
For the Northern District of California

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E-FILED on 9/8/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMAR EVANS,

Plaintiff,

v.

COUNTY OF SANTA CLARA PROBATION
DEPARTMENT,

Defendants.

No. C-06-03299 RMW

ORDER STRIKING AMENDED
COMPLAINT WITHOUT PREJUDICE AND
STRIKING NOTICE OF REMOVAL
[Re Docket No. 64, 68, 72]

The court hereby strikes without prejudice plaintiff's Amended Complaint filed on February 19, 2008 and his purported removal of this case to state court.

On February 19, 2008, plaintiff filed a "Notice of Amended Complaint" without leave of the court. The County previously filed an Answer on September 14, 2006, an Amended Answer on November 17, 2006 and a Second Amended Answer on January 26, 2007. These were all filed with permission of the court. Plaintiff has not obtained leave of court to file an Amended Complaint. On May 20, 2008, plaintiff filed a "Notice to Adverse Parties of Filing of Notice of Removal." The parties have filed various briefs and correspondence regarding the Amended Complaint and the purported removal filed by plaintiff.


1 The court on its own motion strikes the Amended Complaint and the purported notice of
2 Removal. However, these actions are taken without prejudice. With respect to the Amended
3 Complaint, Federal Rule of Civil Procedure 15(a)(2) requires leave of court in order to amend a
4 complaint once an answer has been filed. Plaintiff has obtained no such leave.

5 Plaintiff cannot "remove" a case filed in federal court to state court. however, if a plaintiff
6 drops all of his federal claims, the court may no longer have a basis for jurisdiction. here, it appears
7 that the Amended Complaint is based solely on state law claims. Therefore, if plaintiff files a notice
8 of motion for leave to file an amended complaint and the court grants it, then the court may dismiss
9 the case for lack of a basis for continued jurisdiction. The court does not have the power to
10 "remove" the case to state court. However, the dismissal would be without prejudice so plaintiff
11 could proceed in state court provided he has complied with any claim filing requirements and files
12 before the expiration of any period of the applicable statute of limitation. Plaintiff is cautioned that
13 he may have a statute of limitation or other procedural bar to proceeding in state court.

14 The court hereby sets a Case Management Conference for October 17, 2008 at 10:30 a.m. If
15 plaintiff wishes to file a motion to amend his complaint, he should file the motion on or before
16 October 3, 2008. The court suggests that if plaintiff wishes to amend, he should meet and confer
17 with defendant first, as perhaps a stipulation could be reached that an Amended Complaint could be
18 filed.

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DATED: 9/7/08



RONALD M. WHYTE
United States District Judge

1 **Notice of this document been sent to:**

2 **Plaintiff:**

3 Jamar James Evans
4 P. O. Box 25
5 Atwater, CA 95301
6 209-358-8909
7 PRO SE

8 **Notice of this document has been electronically sent to:**

9 **Counsel for Defendants:**

10 Kevin Hammon kevin.hammon@cco.sccgov.org

11

12 Counsel are responsible for distributing copies of this document to co-counsel that have not
13 registered for e-filing under the court's CM/ECF program.

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Dated: 9/8/08

JAS
Chambers of Judge Whyte