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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KENDRICK BANGS KELLOGG,  
  
Plaintiff,  
  
v.  
  
JULIE WILSON, et al.,  
  
Defendants.

Case No. 17-cv-01505-BAS-JLB

**ORDER:**

**(1) DISMISSING AS MOOT  
PLAINTIFF’S MOTION FOR  
LEAVE TO FILE THIRD  
AMENDED COMPLAINT (ECF No.  
11);**

**(2) GRANTING PLAINTIFF’S  
MOTION FOR LEAVE TO FILE  
FOURTH AMENDED  
COMPLAINT (ECF No. 13);**

**AND**

**(3) DISMISSING WITH LEAVE TO  
AMEND PLAINTIFF’S FOURTH  
AMENDED COMPLAINT**

Presently before the Court is Plaintiff Kendrick Bangs Kellogg’s motions for leave to file an amended complaint.<sup>1</sup> (ECF No. 11, 13.) On July 25, 2017, Plaintiff

<sup>1</sup> Under Federal Rule of Civil Procedure 15(a)(2), Plaintiff may only file an amended complaint if granted leave by the Court or with the opposing party’s written consent. Fed. R. Civ. Pro. 15(a)(2). Because Plaintiff is proceeding pro se, the Court construed Plaintiff’s third and fourth amended complaints as motions for leave to file an amended complaint and accepted the motions to be filed on the docket. (See, e.g.,

1 initiated this action, processing pro se. (ECF No. 1.) On August 24, 2017, Plaintiff  
2 filed a First Amended Complaint (ECF No. 4.), and on September 11, 2017, Plaintiff  
3 filed a Second Amended Complaint (ECF No. 9). Subsequently, Plaintiff filed two  
4 motions for leave to file an amended complaint, most recently filing a motion for  
5 leave to file a fourth amended complaint on November 28, 2017. (ECF No. 11, 13.)  
6 Plaintiff has not served the defendants in this case with any version of the complaint  
7 or any motions for leave to amend.

8 The Court finds these motions suitable for determination on the papers  
9 submitted and without oral argument. See Civ. L.R. 7.1(d)(1). For the following  
10 reasons, the Court **GRANTS** Plaintiff's motion for leave to file a fourth amended  
11 complaint (ECF No. 13), and **DISMISSES** as moot Plaintiff's motion for leave to  
12 file a third amended complaint (ECF No. 11). Additionally, the Court **DISMISSES**  
13 **WITH LEAVE TO AMEND** Plaintiff's Fourth Amended Complaint.

#### 14 15 **I. MOTIONS FOR LEAVE TO AMEND COMPLAINT**

16 Rule 15(a)(2) of the Federal Rules of Civil Procedure provides a party may  
17 amend its complaint only with the opposing party's written consent or the court's  
18 leave. "The court should freely give leave when justice so requires," and apply this  
19 policy with "extreme liberality." *Id.*; *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183,  
20 186 (9th Cir. 1987). However, leave to amend is not to be granted automatically.  
21 *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (citing *Jackson*  
22 *v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990)). Granting leave to amend  
23 rests in the sound discretion of the district court. *Pisciotta v. Teledyne Indus., Inc.*,  
24 91 F.3d 1326, 1331 (9th Cir. 1996).

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27 \_\_\_\_\_  
28 ECF No. 11 (Motion for Leave to File Third Amended Complaint), ECF No. 13  
(Motion for Leave to File Fourth Amended Complaint.) In retrospect, pursuant to  
Rule 15(a)(2), Plaintiff's First and Second Amended Complaints should have also  
been construed as motions for leave to amend. (See ECF Nos. 4, 9.)

1           The Court considers five factors in assessing a motion for leave to amend: (1)  
2 bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of the  
3 amendment, and (5) whether the plaintiff has previously amended the complaint.  
4 *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004); see also *Foman v. Davis*,  
5 371 U.S. 178, 182 (1962). Of these factors, prejudice to the opposing party carries  
6 the greatest weight. *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th  
7 Cir. 2003). However, absent prejudice, a strong showing of the other factors may  
8 support denying leave to amend. See *id.*

9           After considering the five factor test, the Court grants Plaintiff leave to file the  
10 fourth amended complaint. Even though the initial complaint was filed at the end of  
11 July, Plaintiff has filed an amended complaint or a motion for leave to file an  
12 amended complaint almost every month since July. It is likely that these various  
13 amendments and pending motions have contributed to Plaintiff's delay in serving any  
14 version of the complaint on the defendants in this case. The Court finds that the  
15 defendants will not be prejudiced by the filing of a fourth amended complaint because  
16 this case has not moved forward pending these motions and, accordingly, no  
17 responsive motions or other proceedings have occurred. The Court also does not find  
18 any reason to suspect Plaintiff seeking to amend his complaint for a fourth time is in  
19 bad faith. Though Plaintiff has amended his complaint before, the Court finds that  
20 permitting the fourth amended complaint at this stage is justified.

## 21 22 **II.    DISMISSAL PURSUANT TO RULE 8**

23           Although the Court will allow Plaintiff to amend his complaint for a fourth  
24 time, Plaintiff's Fourth Amended Complaint is dismissed for failure to comply with  
25 Federal Rule of Civil Procedure 8.

26           A court may dismiss a complaint sua sponte that does not comply with Rule  
27 8. See *Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131 (9th Cir.  
28 2008) (citing *Gillibeau v. City of Richmond*, 417 F.2d 426, 431 (9th Cir. 1969)).

1 Federal Rule of Civil Procedure 8(a) requires that a complaint include a short and  
2 plain statement of the grounds for this Court’s jurisdiction, a short and plain statement  
3 of the legal claims being asserted, and a demand for judgment for the relief sought.  
4 Fed. R. Civ. P. 8(a)(1)-(3); see also *Bautista v. Los Angeles Cnty*, 216 F.3d 837, 849  
5 (9th Cir. 2000). Rule 8 directs that each allegation to be “simple, concise, and direct.”  
6 Fed. R. Civ. P. 8(d)(1). When a plaintiff pleads allegations that are “argumentative,  
7 prolix, replete with redundancy and largely irrelevant,” then a court may properly  
8 dismiss the complaint for failing to comply with Rule 8. *McHenry v. Renne*, 84 F.3d  
9 1172, 1177-79 (9th Cir. 1996); see also *Davis v. Unruh*, 677 F. App’x 456, 456-57  
10 (9th Cir. 2017) (affirming dismissal of an amended complaint that consisted of 159  
11 pages and contained 172 pages of exhibits). While the court “ha[s] an obligation  
12 where the petitioner is pro se, particularly in civil rights cases, to construe the  
13 pleadings liberally and to afford the petitioner the benefit of any doubt,” *Hebbe v.*  
14 *Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d  
15 1026, 1027 n.1 (9th Cir. 1985)), it may not “supply essential elements of claims that  
16 were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266,  
17 268 (9th Cir. 1982).

18 The Court finds that Plaintiff’s Fourth Amended Complaint fails to comply  
19 with Rule 8’s “short and plain statement” requirement, and the Court is unable to  
20 determine whether Plaintiff sufficiently stated a claim. Plaintiff’s complaint is over  
21 ninety pages, including thirty-four single spaced pages of conclusory or confusing  
22 allegations starting in the early 1990’s and almost sixty pages of exhibits. See *Hatch*  
23 *v. Reliance Ins. Co.*, 758 F.2d 409, 415 (9th Cir. 1985) (affirming dismissal of  
24 plaintiff’s complaints that were over seventy pages in length and “confusing,  
25 conclusory, and not in compliance with Rule 8”); *United States ex rel. Garst v.*  
26 *Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003) (“Rule 8(a) requires  
27 parties to make their pleadings straightforward, so that judges and adverse parties  
28 need not try to fish a gold coin from a bucket of mud.”)

1           Nonetheless, the Court grants Plaintiff leave to file a fifth amended complaint  
2 that cures these deficiencies. In his fifth amended complaint, “Plaintiff must  
3 succinctly specify who did what, when the events occurred, and how Plaintiff was  
4 harmed by the alleged wrongful conduct.” Davis v. San Diego Dist. Attorney, No.  
5 17-CV-654 JLS (BGS), 2017 WL 2972416, at \*2 (S.D. Cal. July 12, 2017). “Each  
6 allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1).


7  
8 **III. CONCLUSION**

9           In light of the foregoing, and exercising its discretion, the Court **GRANTS**  
10 Plaintiff’s motion for leave to file a fourth amended complaint (ECF No. 13) and  
11 **DISMISSES** as moot Plaintiff’s motion for leave to file a third amended complaint  
12 (ECF No. 11). Accordingly, the Court directs the Clerk of the Court to file ECF No.  
13 13-1 as Plaintiff’s Fourth Amended Complaint.

14           Additionally, the Court **DISMISSES WITH LEAVE TO AMEND** Plaintiff’s  
15 Fourth Amended Complaint. Plaintiff may file a fifth amended complaint **no later**  
16 **than January 31, 2018**, but the Court cautions Plaintiff that the fifth amended  
17 complaint must comply with Federal Rule of Civil Procedure 8. If Plaintiff’s  
18 allegations are not “simple, concise, and direct,” the Court may dismiss Plaintiff’s  
19 fifth amended complaint without another opportunity to amend. Fed. R. Civ. P.  
20 8(d)(1); see Nevijel v. N. Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981) (“A  
21 complaint which fails to comply with [Rule 8] may be dismissed with prejudice[.]”).

22 **IT IS SO ORDERED.**

23  
24 **DATED: December 14, 2017**

  
**Hon. Cynthia Bashant**  
**United States District Judge**