

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Mike Morgan v. A. Espinoza, et al.

Morgan v. Espinoza · No. 2:23-CV-1955-DAD-DMC-P · Decided September 22, 2025

SUMMARY

The United States District Court for the Eastern District of California struck Plaintiff Mike Morgan’s second amended complaint because it was filed without leave of court or a stipulation of all parties. The action proceeds on the first amended complaint against Defendants Davies and Espinoza.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dennis M. Cota
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	September 22, 2025
DOCKET	2:23-CV-1955-DAD-DMC-P
DISPOSITION	other
PROCEDURAL POSTURE	Prisoner civil-rights action under 42 U.S.C. § 1983; the court considered whether to strike Plaintiff’s second amended complaint filed without leave of court or a stipulation.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Mike Morgan v. A. Espinoza, Davies, Hall

TOPICS

- motion to amend
- pleadings
- civil procedure
- civil rights
- prisoners rights

PRACTICE AREAS

- civil procedure
- prisoner civil rights

QUESTIONS PRESENTED

- Whether Plaintiff could file a second amended complaint without leave of court or a stipulation under Federal Rule of Civil Procedure 15.

2. Whether the improperly filed second amended complaint should be stricken and the action allowed to proceed on the first amended complaint.

HOLDINGS

1. Plaintiff could not amend the pleading as of right because the second amended complaint was filed more than 21 days after service of a responsive pleading and was not filed pursuant to a stipulation; leave of court was therefore required.
2. The second amended complaint was stricken because it was filed without the required leave of court or stipulation.

KEY QUOTATIONS

“If an amended pleading cannot be made as of right and is filed without leave of court or consent of the opposing party, the amended pleading is a nullity and without legal effect.” (at 2)

FACTUAL BACKGROUND

Plaintiff, a prisoner proceeding pro se, brought a civil-rights action under 42 U.S.C. § 1983. After Defendant Davies filed an answer to the first amended complaint on October 15, 2024, Plaintiff filed a second amended complaint on July 30, 2025, without obtaining leave of court or a stipulation signed by all parties.

PROCEDURAL HISTORY

The court ordered service of Plaintiff's first amended complaint on Defendants Davies, Hall, and Espinoza. Davies answered, while Espinoza and Hall moved to dismiss; the District Judge adopted recommendations partially granting the motion, dismissing Hall, and directing Espinoza to answer. Plaintiff then filed a second amended complaint without leave of court or a stipulation, and the court struck it, allowing the action to proceed on the first amended complaint against Davies and Espinoza.

DISPOSITION

other

CASES CITED

- Hardin v. Wal-Mart Stores, Inc., 813 F. Supp. 2d 1167, 1181 (E.D. Cal. 2011)
- Sexton v. Spirit Airlines, Inc., Case No. 2:21-cv-00898-TLN-AC, 2022 WL 976914 (E.D. Cal. Mar. 31, 2022)
- Guthrie v. Hurwitz, Case No. 1:18-cv-00282-AWI-BAM, 2018 WL 4005261, at *1 (E.D. Cal. Aug. 20, 2018)

OPINION

1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN
DISTRICT OF CALIFORNIA 10 11 MIKE MORGAN, No. 2:23-CV-1955-DAD-DMC-P 12
Plaintiff, 13 v. ORDER 14 A. ESPINOZA, et al., 15 Defendants. 16 17 Plaintiff, a prisoner
proceeding pro se, brings this civil rights action pursuant to 18 42 U.S.C. § 1983. 19 On May 15,

2024, the Court ordered service of Plaintiff's first amended complaint 20 on Defendants Davies, Hall, and Espinoza.

See ECF No. 17. On October 15, 2024, Defendant 21 Davies filed an answer, see ECF No. 32, and Defendants Espinoza and Hall filed a motion to 22 dismiss, see ECF No. 31. The Court recommended that the motion to dismiss be granted in part 23 and denied in part, that Defendant Hall be dismissed, and that Defendant Espinoza be directed to 24 file an answer to the first amended complaint.

See ECF No. 41. The District Judge adopted the 25 findings and recommendations in full on August 18, 2025. See ECF No. 47. Defendant Espinoza 26 filed an answer to the first amended complaint on September 11, 2025. See ECF No. 49. 27 / / / 28 / / / 1 Before the District Judge ruled on the findings and recommendations addressing 2 the motion to dismiss filed by Defendants Hall and Espinoza, Plaintiff filed a second amended 3 complaint on July 30, 2025.

See ECF No. 45. The Federal Rules of Civil Procedure provide that 4 a party may amend his or her pleading once as a matter of course within 21 days of serving the 5 pleading or, if the pleading is one to which a responsive pleading is required, within 21 days after 6 service of the responsive pleading, see Fed. R. Civ. P. 15(a)(1)(A), or within 21 days after service 7 of a motion under Rule 12(b), (e), or (f) of the rules, whichever time is earlier, see Fed.

R. Civ. P. 8 15(a)(1)(B). In all other situations, a party's pleadings may only be amended upon leave of court 9 or stipulation of all the parties. See Fed. R. Civ. P. 15(a)(2). 10 Where a party files an amended complaint without the right to do so, it is properly 11 stricken by the Court. See, e.g., *Hardin v. Wal-Mart Stores, Inc.*, 813 F. Supp. 2d 1167, 1181 12 (E.D.

Cal. 2011) (striking fourth amended complaint: "If an amended pleading cannot be made as 13 of right and is filed without leave of court or consent of the opposing party, the amended pleading 14 is a nullity and without legal effect."); *Sexton v. Spirit Airlines, Inc.*, Case No. 2:21-cv-00898- 15 TLN-AC, 2022 WL 976914 (E.D. Cal. March 31, 2022) (striking amended complaint); *Guthrie v.* 16 *Hurwitz*, Case No. 1:18-cv-00282-AWI-BAM, 2018 WL 4005261, at *1 (E.D.

Cal. Aug. 20, 17 2018) (striking amended complaint). 18 Here, Plaintiff's second amended complaint was filed more than 21 days after 19 Defendant Davies filed an answer on October 15, 2024, and was not filed pursuant to a stipulation 20 signed by all parties.

As such, leave of court was required. Because Plaintiff filed the second 21 amended complaint absent leave of court or a stipulation, it will be stricken. By separate order, 22 the Court will refer this matter for a settlement conference. 23 / / / 24 / / / 25 / / / 26 / / / 27 / / / 28 / / /] Accordingly, IT IS HEREBY ORDERED as follows: 2 1. Plaintiff's second amended complaint, ECF No. 45, filed on July 30, 2025, 3 || without leave or court or stipulation, is stricken.

4 2. This action proceeds on Plaintiff's first amended complaint as against 5 || Defendants Davies
and Espinoza. 6 7 || Dated: September 22, 2025 Svc 8 DENNIS M. COTA 9 UNITED STATES
MAGISTRATE JUDGE 10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

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