

**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

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