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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SPENCER ELDEN,)	Case No. CV 21-6836 FMO (AGRx)
)	
Plaintiff,)	
)	
v.)	ORDER
)	
NIRVANA, L.L.C., <u>et al.</u> ,)	
)	
Defendants.)	

On December 22, 2021, defendants UMG Recordings, Inc., Universal Music Group, Inc., The David Geffen Company, Geffen Records, MCA Records, Nirvana, L.L.C., Kurt Cobain (deceased), Courtney Love (as Executor of the Estate of Kurt Cobain), Krist Novoselic, David Grohl, and Kirk Weddle (collectively, “defendants”) filed a Motion to Dismiss First Amended Complaint (“Motion”). The Motion was set for oral argument on January 20, 2022. (See Dkt. 21, Motion). The January 20, 2022, hearing date required plaintiff to file his Opposition to the Motion no later than December 30, 2021. See Local Rule 7-9. Plaintiff did not file any opposition to defendants’ Motion. Accordingly, the court will vacate the hearing date and grant defendants’ Motion. See Local Rule 7-12.

In addition, given the policy favoring amendment of complaints, see Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990), the court will grant defendants’ Motion and give plaintiff one last opportunity to amend his complaint. In preparing the Second Amended Complaint, plaintiff shall carefully evaluate the contentions set forth in defendants’ Motion, including defendants’ assertions that plaintiff’s claims pursuant to 18 U.S.C. § 2255 and

1 18 U.S.C. § 1595 are time-barred. The court expects that defendants will agree to any
2 amendment(s) that will cure the alleged defects.

3 Based on the foregoing, IT IS ORDERED THAT:

4 1. Defendant's Motion to Dismiss First Amended Complaint (**Document No. 21**) is
5 **granted**, and the hearing on defendant's Motion, currently set for January 20, 2022, is hereby
6 **vacated**.

7 2. The First Amended Complaint is **dismissed with leave to amend**.

8 3. If plaintiff still wishes to pursue this action, he is granted until **January 13, 2022**, to
9 file a Second Amended Complaint attempting to cure, to the extent he believes is warranted by
10 existing law, the alleged defects outlined in defendants' Motion.

11 4. The Second Amended Complaint must be labeled "Second Amended Complaint,"
12 filed in compliance with Local Rule 3-2 and contain the case number assigned to the case, i.e.,
13 Case No. CV 14-2818 FMO (PLAx). In addition, plaintiff is informed that the court cannot refer to
14 a prior pleading in order to make his Second Amended Complaint complete. Local Rule 15-2
15 requires that an amended pleading be complete in and of itself without reference to any prior
16 pleading. This is because, as a general rule, an amended pleading supersedes the original
17 pleading. See Ramirez v. Cnty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("It is
18 well-established in our circuit that an amended complaint supersedes the original, the latter being
19 treated thereafter as non-existent. In other words, 'the original pleading no longer performs any
20 function[.]'" (citations and internal quotation marks omitted).

21 5. Plaintiff is cautioned that failure to timely file a Second Amended Complaint shall
22 result in this action being dismissed without prejudice for failure to prosecute and/or failure to
23 comply with a court order. See Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626,
24 629-30, 82 S.Ct. 1386, 1388 (1962).

25 6. Any defendant shall file its Answer to the Second Amended Complaint or a motion
26 pursuant to Fed. R. Civ. P. 12 no later than **January 27, 2022**.

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7. In the event defendants wish to file another motion to dismiss, then counsel for the parties shall, on **January 20, 2022, at 10:00 a.m.**¹ meet and confer in person or via video conference to discuss defendants’ motion to dismiss. Defendants’ motion must include copies of all meet and confer letters as well as a declaration that sets forth, in detail, the entire meet and confer process (i.e., when and where it took place, how long it lasted and the position of each attorney with respect to each disputed issue that will be the subject of the motion). Failure to include such a declaration will result in the motion being denied.

Dated this 3rd day of January, 2022.

/s/
Fernando M. Olguin
United States District Judge

¹ Counsel may agree to meet and confer at another time and place without seeking court approval for such an agreement.