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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FRANK GONZALES,

Plaintiff,

v.

MATTHEW L. CATE, et al.,

Defendants.

CASE NO. 1:06-cv-1420-AWI-MJS (PC)

ORDER VACATING RECOMMENDATION
THAT CLAIMS BE DISMISSED

(ECF No. 49)

PLAINTIFF'S FOURTH AMENDED
COMPLAINT DUE FEBRUARY 15, 2011

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Plaintiff Frank Gonzales ("Plaintiff") is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On September 23, 2010, the Court screened Plaintiff's Third Amended Complaint and found that it stated a claim against certain Defendants but failed to state a claim against others. The Court recommended that the action proceed as to the cognizable claims but be dismissed as to the others. The Court recommended that Plaintiff not be given leave to amend because he had previously been notified of the deficiencies in his case and failed to cure them in his Third Amended Complaint. (ECF No. 49.)

Plaintiff filed timely objections asking that he be granted another opportunity to amend. Having considered Plaintiff's objections, the Court finds that amendment would be appropriate. Accordingly, Plaintiff is being granted one **final** opportunity to amend; no further amendments will be permitted.

Plaintiff would be well-served to focus his Fourth Amended Complaint on addressing the deficiencies noted in the Court's September 23, 2010 Screening Order and not add

1 new claims or new defendants. Plaintiff also is directed to comply with Rule 8(a)'s
2 requirement that a Complaint be "a short and plain statement."

3 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint
4 be complete in itself without reference to any prior pleading. As a general rule, an
5 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,
6 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no longer
7 serves any function in the case. Therefore, in an amended complaint, as in an original
8 complaint, each claim and the involvement of each defendant must be sufficiently alleged.
9 The amended complaint should be clearly and boldly titled "Fourth Amended Complaint,"
10 refer to the appropriate case number, and be an original signed under penalty of perjury.

11 Based on the foregoing, it is HEREBY ORDERED that:

- 12 1. The Court's September 23, 2010 Findings and Recommendation is
13 VACATED to the extent that it recommends dismissal of Plaintiff's claims;
- 14 2. Plaintiff shall file an amended complaint not later than **February 15, 2011**;
- 15 3. Plaintiff shall caption the document "Fourth Amended Complaint" and refer
16 to case number 1:06-cv-1420-AWI-MJS (PC); and
- 17 4. If Plaintiff fails to comply with this order, this action will be dismissed for
18 failure to prosecute and failure to obey a Court order.

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21 IT IS SO ORDERED.

22 Dated: January 13, 2011

Isl. Michael J. Seng
23 UNITED STATES MAGISTRATE JUDGE