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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEITH ZAVALA,

Plaintiff,

v.

CHRIS CHRONES, et al.,

Defendants.

CASE NO. 1:09-cv-01352-DLB PC

ORDER GRANTING PLAINTIFF’S MOTION
TO FILE SECOND AMENDED COMPLAINT
WITHIN THIRTY DAYS

(Doc. 14)

ORDER DENYING DEFENDANT’S
MOTION FOR EXTENSION OF TIME TO
FILE RESPONSIVE PLEADING AS MOOT

/ (Doc. 15)

Plaintiff Keith Zavala (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action by filing his original complaint on August 3, 2009. Plaintiff filed a first amended complaint on August 28, 2009. On December 1, 2009, the Court screened Plaintiff’s first amended complaint and found that it stated a cognizable claim against Defendant C. Martin, but failed to state any other cognizable claims against any other defendants. The Court ordered Plaintiff either to file a second amended complaint or proceed only on the claims found to be cognizable. Plaintiff notified the Court that he did not wish to amend and was willing to proceed only against Defendant C. Martin. Now pending before the Court is 1) Plaintiff’s motion to file an amended complaint, filed on April 14, 2010 and 2) Defendant Martin’s motion for an extension of time to file a responsive pleading.

1 Rule 15(a) of the Federal Rules of Civil Procedure provides that Plaintiff may amend
2 with leave of the court, and leave shall be given “when justice so requires.” Plaintiff contends
3 that he relied on advice from a jailhouse lawyer to not amend his complaint. Plaintiff contends
4 that he wishes to amend to include additional claims against five defendants. Defendant Martin
5 has yet to file a responsive pleading.

6 The Court will grant Plaintiff leave to file a second amended complaint. Plaintiff is
7 advised that an amended complaint supercedes the previous complaint, *Forsyth v. Humana, Inc.*,
8 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987), and must
9 be “complete in itself without reference to the prior or superceded pleading,” Local Rule 220.
10 Plaintiff is warned that “[a]ll causes of action alleged in an original complaint which are not
11 alleged in an amended complaint are waived.” *King*, 814 F.2d at 567 (citing to *London v.*
12 *Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981)); *accord Forsyth*, 114 F.3d at 1474.

13 Because the Court will grant Plaintiff leave to file a second amended complaint,
14 Defendant Martin’s motion for extension of time to file a responsive pleading is denied as moot.
15 Defendant Martin is not required to file a responsive pleading to Plaintiff’s first amended
16 complaint. The Court will issue a new order after screening Plaintiff’s second amended
17 complaint.

18 Accordingly, it is HEREBY ORDERED that:

- 19 1) Plaintiff’s motion for leave to file a second amended complaint is GRANTED;
- 20 2) Plaintiff is to file a complete second amended complaint within **thirty (30) days**
21 from the date of service of this order;
- 22 3) Defendant Martin’s motion for extension of time is DENIED as moot. Defendant
23 is not required to file a responsive pleading to Plaintiff’s first amended complaint.

24 IT IS SO ORDERED.

25 **Dated: April 19, 2010**

/s/ Dennis L. Beck
26 UNITED STATES MAGISTRATE JUDGE