

1
2
3
4
5
6
7
8
9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 CARLOS D. GABARRETE,

CASE No. 1:11-cv-00324-MJS (PC)

13
14 Plaintiff,

ORDER DENYING PLAINTIFF'S
RESPONSE SUPPLEMENTING
OPERATIVE PLEADING

15 v.

(ECF No. 34)

16 C.B. HAZEL, et al.,

17
18 Defendants.
19
20 _____ /

21 Plaintiff Carlos D. Gabarrete, a state prisoner proceeding pro se and in forma
22 pauperis filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff has
23 consented to Magistrate Judge jurisdiction. (ECF No. 8.)

24 On July 16, 2012, Plaintiff filed his Fourth Amended Complaint. (ECF No. 25.) On
25 July 31, 2012, the Court issued its order screening the Fourth Amended Complaint, finding
26 cognizable Eighth Amendment claims against Defendants Hazel, Medina, Prudhel,
27 Navarro, Esquivel, G. Hernandez and F. Hernandez for excessive force, failure to protect,
28 and medical indifference, and ordering Plaintiff to either file an amended complaint or notify

1 the Court of his willingness to proceed on the cognizable claims. (ECF No. 27.)

2 On August 6, 2012, Plaintiff filed a Fifth Amended Complaint. (ECF No. 31.)

3 On August 9, 2012, Plaintiff filed a response to the Court's Order to Amend or
4 Notify. It reflects his willingness to proceed on the previously identified cognizable claims
5 but also asks the Court to screen the Fifth Amended Complaint. (ECF No. 32.)

6 On August 21, 2012, the Court issued its order requiring Plaintiff to clarify, by not
7 later than September 10, 2012, whether he wishes to proceed upon the previously
8 identified cognizable Eighth Amendment claims against Defendants Hazel, Medina,
9 Prudhel, Navarro, Esquivel, G. Hernandez and F. Hernandez for excessive force, failure
10 to protect, and medical indifference, or upon the as yet unscreened Fifth Amended
11 Complaint. (ECF No. 33.)

12 On August 27, 2012, Plaintiff filed a purported response to the Court's order dated
13 July 30, 2012, supplementing either the Fourth Amended Complaint or the Fifth Amended
14 Complaint (ECF No. 34), whichever is deemed operative. The proposed supplement is
15 now before the Court.

16 Plaintiff's proposed supplementation is denied. Amended pleadings must be
17 complete within themselves without reference to another pleading. Partial amendments are
18 not permissible. Local Rule 220. A plaintiff may not supplement as to events occurring prior
19 to the date of the pleading to be supplemented. Fed. R. Civ. P. 15(d). Here Plaintiff seeks
20 to impermissibly file a partial amendment supplementing the operative pleading.

21 Plaintiff is reminded that, by not later than September 10, 2012, he must notify the
22 Court in writing whether he wishes to proceed upon the Fourth Amended Complaint's
23 previously identified cognizable Eighth Amendment claims against Defendants Hazel,
24 Medina, Prudhel, Navarro, Esquivel, G. Hernandez and F. Hernandez for excessive force,
25 failure to protect, and medical indifference, or upon the as-yet-unscreened Fifth Amended
26 Complaint. Failure to comply by the September 10th deadline may result in dismissal of
27 this action for failure to obey a Court order.

28 Accordingly, for the foregoing reasons, it is hereby ordered that Plaintiff's response

1 supplementing the operative pleading (ECF No. 34) is DENIED.
2
3
4

5 IT IS SO ORDERED.

6 Dated: August 29, 2012

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE