

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SAIYEZ AHMED,
Plaintiff,
v.
M. MARTEL et al.,
Defendants.

No. 1:13-cv-00941-DAD-MJS

ORDER REAFFIRMING ORDER
ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. No. 33)

ORDER DENYING DEFENDANTS'
MOTION FOR SCREENING OF
PLAINTIFF'S SECOND AMENDED
COMPLAINT

(Doc. No. 35)

AMENDED COMPLAINT DUE WITHIN
THIRTY (30) DAYS

Before the court are plaintiff Saiyez Ahmed's objections to the magistrate judge's findings and recommendations on a motion to dismiss (Doc. No. 34), and defendants' request for screening of those objections to the extent they constitute a second amended complaint (Doc. No. 35). Having considered plaintiff's objections and, for the reasons stated below, this court will reaffirm the order adopting the magistrate judge's findings and recommendations. The court will also deny defendants' motion for screening of plaintiff's second amended complaint.

1 **PROCEDURAL HISTORY**

2 Plaintiff Saiyez Ahmed, a state prisoner proceeding *pro se* and *in forma pauperis*, filed
3 this civil rights action pursuant to 42 U.S.C. § 1983 on June 20, 2013. (Doc. No. 1.) The court
4 screened plaintiff’s complaint, found that it failed to state a claim upon which relief could be
5 granted, and dismissed it with leave to amend. (Doc. No. 10.) Plaintiff filed a first amended
6 complaint on December 2, 2013. (Doc. No. 11.) The assigned magistrate judge screened the first
7 amended complaint and found that it stated cognizable first amendment retaliation claims against
8 defendants C.P. Cano, D. Combs, M.C. Davis, M. Martel, and R. Shannon, but no other claims.
9 (Doc. No. 13.)

10 Service was initiated and, on November 15, 2014, defendants filed a motion to dismiss the
11 first amended complaint. (Doc. No. 17.) On June 29, 2015, the magistrate judge issued findings
12 and recommendations recommending that the motion to dismiss be granted in part and denied in
13 part. (Doc. No. 24.) However, upon consideration of defendants’ objections, the magistrate judge
14 vacated those findings and recommendations and thereafter issued new findings and
15 recommendations recommending that the motion to dismiss be granted in its entirety, but that
16 plaintiff be granted leave to amend. (Doc. No. 29.) Defendants filed objections to the revised
17 findings and recommendations. (Doc. No. 30.) Plaintiff sought and received an extension of time
18 to file his objections. (Doc. Nos. 31, 32.) However, the extended deadline passed without
19 plaintiff filing any objection. On October 22, 2015, the then assigned district court judge adopted
20 the findings and recommendations in full and ordered plaintiff to file an amended complaint
21 within thirty days of that order. (Doc. No. 33.)

22 Thereafter, on November 5, 2015, plaintiff’s objections were received and docketed.
23 (Doc. No. 34.) Those objections are dated October 11, 2015, and were therefore timely under the
24 prison mailbox rule.¹ On November 20, 2015, defendants filed a motion construing the plaintiff’s

25 _____
26 ¹ Pursuant to the prison mailbox rule, a document is deemed served or filed on the date a prisoner
27 signs the document (or signs the proof of service, if later) and gives it to prison officials for
28 mailing. *See Houston v. Lack*, 487 U.S. 266 (1988) (establishing prison mailbox rule); *Campbell*
v. Henry, 614 F.3d 1056, 1059 (9th Cir. 2010) (applying the mailbox rule to both state and federal
filings by prisoners).

1 objections as a second amended complaint and asking the Court to screen the purported pleading.
2 (Doc. No. 35.) This matter was then reassigned to the undersigned on December 4, 2015. (Doc.
3 No. 36.)

4 **PLAINTIFF’S OBJECTIONS**

5 On August 26, 2015, the magistrate judge recommended that plaintiff’s first amended
6 complaint be dismissed with leave to amend because documents attached to the complaint
7 contradicted plaintiff’s allegations of retaliation. (Doc. No. 29.) Specifically, plaintiff alleged
8 that defendants subjected him to a retaliatory transfer to an institution that housed his enemies.
9 However, documents attached to the complaint reflect that defendants were not responsible for
10 the transfer decision, and no other facts linked defendants to that decision.

11 Plaintiff attempts to cure these deficiencies by presenting new facts in his objections.
12 However, plaintiff may not plead additional factual allegations through his objections. A
13 complaint must be “complete in itself without reference to the prior or superseded pleading.”
14 Local Rule 220. Indeed, the presentation of additional facts supports the recommendation to
15 dismiss plaintiff’s complaint with leave to amend.

16 Accordingly, the court reaffirms the order (Doc. No. 33) adopting the magistrate judge’s
17 revised findings and recommendations. Plaintiff will be ordered to file an amended pleading
18 within thirty days of service of this order if he wishes to continue to pursue this action.

19 **DEFENDANTS’ MOTION**

20 Defendants interpret plaintiff’s objections as an amended pleading and ask that it be
21 screened. (Doc. No. 35.) However, the objections may not be construed as an amended pleading.
22 The objections do not contain a list of the defendants, a description of the causes of action, or a
23 statement of the relief sought. *See* Fed. R. Civ. P. 8(a). Nor may these elements be gleaned by
24 reference to plaintiff’s prior pleading. Local Rule 220; *see also Loux v. Rhay*, 375 F.2d 55, 57
25 (9th Cir. 1967) (an amended complaint supersedes a prior complaint). Accordingly, defendants’
26 motion for screening will be denied because plaintiff’s objections do not constitute a second
27 amended complaint and cannot be construed as such.

28 /////

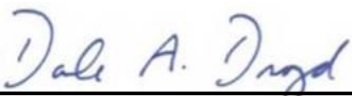
1 **CONCLUSION**

2 Based on the foregoing:

- 3 1. The order adopting the magistrate judge’s findings and recommendations (Doc. No.
4 33) is reaffirmed;
- 5 2. Plaintiff shall file an amended complaint or notice of voluntary dismissal within thirty
6 (30) days of service of this order;
- 7 3. If plaintiff fails to file an amended complaint or notice of voluntary dismissal, this
8 action will be dismissed with prejudice for failure to obey a court order; and
- 9 4. Defendants’ motion for screening of plaintiff’s second amended complaint (Doc. No.
10 35) is denied.

11 IT IS SO ORDERED.

12 Dated: July 29, 2016

13 
14 _____
15 UNITED STATES DISTRICT JUDGE