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3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF CALIFORNIA

5 JORGE CORENA,

6 Plaintiff,

7 v.

8 KIM HOLLAND, et al.,

9 Defendants.

1:16-cv-01025-EPG (PC)

ORDER DISMISSING PLAINTIFF'S FIRST  
AMENDED COMPLAINT WITH LEAVE TO  
AMEND

(ECF NO. 8)

THIRTY DAY DEADLINE

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11 **I. BACKGROUND**

12 Jorge Corena ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in  
13 this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed a complaint on July 15,  
14 2016. (ECF No. 1). Among other things, Plaintiff alleged that he was assaulted by Defendants  
15 Rodriguez, Cerveza, and Doe.

16 The Court screened Plaintiff's complaint and found that it stated a claim for excessive  
17 force in violation of the Eighth Amendment against Defendants Rodriguez, Cerveza, and Doe,  
18 and a claim for retaliation in violation of the First Amendment against Defendants Rodriguez  
19 and Doe. (ECF No. 7). The Court allowed Plaintiff to choose between going forward with the  
20 claims the Court found cognizable, filing a First Amended Complaint, or standing on the  
21 complaint subject to dismissal of claims and defendants as laid out in the order. (*Id.*).

22 On January 23, 2017, Plaintiff filed a First Amended Complaint. (ECF No. 8). The  
23 First Amended Complaint purported to be a class action. It did not include detailed factual  
24 allegations. Instead, it attached the Court's screening order and made arguments based on that  
25 order, such as "The United States Magistrate Judge acknowledged in its ordered . . . 'causal-  
26 connection' . . . ." Plaintiff also claimed that the California Department of Corrections and  
27 Rehabilitation needs to develop a policy against civil rights violations.

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## II. DISMISSAL OF FIRST AMENDED COMPLAINT WITH LEAVE TO AMEND

Plaintiff's First Amended Complaint is not a proper complaint. Rather than alleging facts and legal claims, Plaintiff has attached the Court's order and made arguments based on that order. As the Court explained before "Plaintiff is advised that an amended complaint supersedes the original complaint, Lacey v. Maricopa County, 693 F.3d. 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete in itself without reference to the prior or superseded pleading, Local Rule 220." (ECF No. 7, pgs. 11-12). A complaint is required to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as true, legal conclusions are not. Id. The mere possibility of misconduct falls short of meeting this plausibility standard. Id.

Thus, if Plaintiff chooses to file an amended complaint rather than going forward on the claims allowed in Plaintiff's first complaint, Plaintiff needs to submit a complete amended complaint with all factual allegations included in that complaint, without reference to the earlier complaint or the Court's order. It must be complete in itself. The Court will screen that amended complaint in its entirety.

It is also worth noting that the Court's screening order only concluded that Plaintiff had asserted factual allegations that set forth certain claims. It did not make any ruling on whether those facts were true. The legal ruling was only that Plaintiff would be entitled to go forward in a lawsuit against Defendants Rodriguez, Cerveza, and Doe for a violation of the Eighth Amendment and against Defendants Rodriguez and Doe for a violation of the First Amendment. If Plaintiff decides to go forward on those claims, the Court will authorize service on those defendants and then proceed with the case.

Additionally, Plaintiff is not entitled to file a class action lawsuit, or assert claims on behalf of anyone except himself, because he is appearing *pro se*. Simon v. Hartford Life, Inc.,

1 546 F.3d 661, 664–65 (9th Cir. 2008) (“courts have routinely adhered to the general rule  
2 prohibiting *pro se* plaintiffs from pursuing claims on behalf of others in a representative  
3 capacity”) (citing cases); Russell v. United States, 308 F.2d 78, 79 (9th Cir. 1962) (“a litigant  
4 appearing in propria persona has no authority to represent anyone other than himself”). To the  
5 extent Plaintiff asserts his claims as a class action, they will be dismissed. Plaintiff may only  
6 represent himself *pro se* (without a lawyer), not others.

### 7 **III. CONCLUSION AND ORDER**

8 Plaintiff’s First Amended Complaint does not state a claim under the standard set out by  
9 Rule 8 of the Federal Rule of Civil Procedure and improperly attempts to assert claims on  
10 behalf of others. For these reasons, it will be dismissed.

11 Under Rule 15(a) of the Federal Rules of Civil Procedure, “leave to amend shall be  
12 freely given when justice so requires.” Accordingly, the Court will provide Plaintiff with time  
13 to file an amended complaint curing the deficiencies identified above. Lopez v. Smith, 203  
14 F.3d 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file an amended complaint  
15 within thirty days if he chooses to do so. He can also stand on his original complaint and go  
16 forward on the claims already found cognizable by this Court.

17 Plaintiff is advised that an amended complaint supersedes the original complaint, Lacey  
18 v. Maricopa County, 693 F 3d. 896, 907 n.1 (9th Cir. 2012) (*en banc*), and that it must be  
19 complete in itself without reference to the prior or superseded pleading, Local Rule 220.  
20 Therefore, in an amended complaint, as in an original complaint, each claim and the  
21 involvement of each defendant must be sufficiently alleged. The amended complaint should be  
22 clearly and boldly titled “Second Amended Complaint,” refer to the appropriate case number,  
23 and be an original signed under penalty of perjury.

24 Based on the foregoing, it is **HEREBY ORDERED** that:

- 25 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 26 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall  
27 either:  
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- 1 a. File a Second Amended Complaint, which is complete in itself, and provides  
2 a short a plain statement of the claims and supporting facts; or  
3 b. Notify the Court in writing that he is willing to proceed with his original  
4 complaint, dated July 15, 2016 (ECF No. 1), but only on the claims allowed  
5 in the Court's order dated December 20, 2016 (a claim for excessive force in  
6 violation of the Eighth Amendment against Defendants Rodriguez, Cerveza,  
7 and Doe, and a claim for retaliation in violation of the First Amendment  
8 against Defendants Rodriguez and Doe).
- 9 3. If Plaintiff chooses to file an amended complaint, Plaintiff shall caption the  
10 amended complaint "Second Amended Complaint" and refer to the case number  
11 1:16-cv-01025-EPG; and  
12 4. Failure to comply with this order may result in the dismissal of this action for  
13 failure to comply with a court order.

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15 IT IS SO ORDERED.

16 Dated: February 2, 2017

17 /s/ Eric P. Grogan  
18 UNITED STATES MAGISTRATE JUDGE  
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