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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CHRISTOPHER HENRY YOUNG,

No. CIV S-05-0736-FCD-CMK-P

Plaintiff,

vs.

ORDER

TRANSPORTATION DEPUTY
SHERIFF I, et al.,

Defendants.

_____/

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action in April 2005. He named several Doe in his complaint, alleging the defendants were deliberately indifferent to his safety. On December 12, 2006, the court found Plaintiff’s complaint stated a claim against defendant Woodford, John Doe 1, Transportation Deputy Sheriff (TDS) I and TDS II. However, the court only authorized service on defendant Woodford, and informed Plaintiff that court is unable to order service of process on fictitious defendants. The court also informed Plaintiff that he must discover the name of the “Doe” defendants and file a motion for leave to amend, accompanied by a proposed amended complaint, identifying the additional defendants. He was cautioned that undue delay in discovery of the defendants’ names and seeking leave to amend may result in the denial of leave

1 to proceed against those defendants (See Doc. 33).

2 Plaintiff provided service information for defendant Woodford, who was
3 successfully served with process in February 2007. Defendant Woodford filed a motion to
4 dismiss for Plaintiff's failure to exhaust his administrative remedies, which was granted in
5 February 2008. Plaintiff then appealed the dismissal of this action. On July 6, 2009, the Ninth
6 Circuit Court of Appeals issued an opinion which found this action had been properly dismissed
7 against defendant Woodford for Plaintiff's failure to exhaust his administrative remedies.
8 However, the judgment was vacated and the matter remanded "for the district court to resolve the
9 action with respect to the unserved County Doe defendants." The Ninth Circuit directed that
10 Plaintiff

11 should be allowed an opportunity to discover the names of the two
12 County Transportation Deputy Sheriffs. *See Wakefield v.*
13 *Thompson*, 177 F.3d 1160, 1163 (9th Cir. 1999) (holding that when
14 the identities of alleged defendants are not known before the filing
15 of a complaint, the plaintiff should be given an opportunity through
16 discovery to identify the unknown defendants, unless it is clear that
17 discovery would not uncover the identities, or that the complaint
18 would be dismissed on other grounds.).

16 The undersigned notes that Plaintiff was informed in December 2006, that he
17 needed to discover the names of the Doe defendants, including the transportation deputy sheriffs,
18 in order for the court to order service on those individuals. He therefore had over a year to
19 discover the names of those individuals prior to the dismissal of this action. However, pursuant
20 to the Ninth Circuit's mandate, Plaintiff will be provided another opportunity to discover the
21 names of these unknown defendants, and file a second amended complaint. Plaintiff is cautioned
22 that the only remaining defendants in this case are the county transportation deputy sheriffs,
23 identified in his amended complaint as TDS I and TDS II.

24 Plaintiff is informed that, as a general rule, an amended complaint supersedes the
25 original complaint. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, all
26 claims alleged in the original complaint which are not alleged in the amended complaint are

1 waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if plaintiff amends
2 the complaint, the court cannot refer to the prior pleading in order to make plaintiff's amended
3 complaint complete. See Local Rule 15-220. An amended complaint must be complete in itself
4 without reference to any prior pleading. See id.

5 Plaintiff is also warned that failure to file an amended complaint within the time
6 provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at 1260-
7 61; see also Local Rule 11-110. Plaintiff is further warned that a complaint which fails to
8 comply with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule
9 41(b). See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

10 Accordingly, IT IS HEREBY ORDERED that plaintiff shall file a second
11 amended complaint within 60 days of the date of service of this order, identifying county
12 transportation deputy sheriffs, identified in his amended complaint as TDS I and TDS II.

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15 DATED: October 13, 2009

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17 **CRAIG M. KELLISON**
18 UNITED STATES MAGISTRATE JUDGE
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