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

GARY RAYMOND XAVIER,

Plaintiff,

No. CIV S-09-0783 LKK CKD P

vs.

S.M. ROCHE, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a California prisoner proceeding with counsel with an action filed pursuant to 42 U.S.C. § 1983. Plaintiff’s second amended complaint was filed on May 24, 2011.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

In his second amended complaint, plaintiff alleges he was subjected to cruel and unusual punishment in violation of the Eighth Amendment by virtue of inadequate medical care.

1 Plaintiff seeks damages and names the California Department of Corrections and Rehabilitation
2 (CDCR) as the only defendant. However, CDCR is entitled to immunity from claims for
3 damages under the Eleventh Amendment. Brown v. Cal. Dept. of Corrections, 554 F.3d 747,
4 752 (9th Cir. 2009). Accordingly, plaintiff's second amended complaint must be dismissed. The
5 court will grant plaintiff leave to file a third amended complaint in which plaintiff names an
6 appropriate defendant.

7 Plaintiff is informed that the court cannot refer to a prior pleading in order to
8 make plaintiff's third amended complaint complete. Local Rule 220 requires that an amended
9 complaint be complete in itself without reference to any prior pleading. This is because, as a
10 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
11 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files a third amended complaint, the original pleading
12 no longer serves any function in the case. Therefore, in a third amended complaint, as in an
13 original complaint, each claim and the involvement of each defendant must be sufficiently
14 alleged.

15 In accordance with the above, IT IS HEREBY ORDERED that:

16 1. Plaintiff's second amended complaint is dismissed; and
17 2. Plaintiff is granted thirty days from the date of service of this order to file a
18 third amended complaint that complies with the requirements of this order, the Civil Rights Act,
19 the Federal Rules of Civil Procedure, and the Local Rules of Practice; the third amended
20 complaint must bear the docket number assigned this case and must be labeled "Third Amended
21 Complaint"; failure to file a third amended complaint in accordance with this order will result in
22 a recommendation that this action be dismissed.

23 DATED: August 3, 2011

/s/ Carolyn K. Delaney

24 United States Magistrate Judge