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

ARTHUR CARR,

Plaintiff,

No. 2:09-cv-0826 GEB KJN P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis with a civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff's April 28, 2010 second amended complaint is before the court.

Rather than submit one complete second amended complaint, it appears plaintiff has attempted to supplement earlier complaints and amended complaints. Plaintiff is advised that leave of court was not granted to supplement his complaint. All complaints must be complete in and of themselves. Moreover, plaintiff's second amended complaint was not signed by plaintiff. Rule 11 of the Federal Rules of Civil Procedure requires signatures on pleadings. Id. Accordingly, plaintiff's April 28, 2010 second amended complaint will be dismissed and plaintiff will be provided one final opportunity in which to file a third amended complaint that

1 contains all of plaintiff's allegations and requests for relief in one document. Plaintiff is  
2 cautioned that failure to comply with this order will result in a recommendation that this action  
3 be dismissed. Defendants are relieved of their obligation to file an amended answer or other  
4 response pending screening of the third amended complaint.

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

14 Because plaintiff has been granted leave to file a third amended complaint, the  
15 discovery deadline of May 28, 2010 and the pretrial motions filing deadline of August 20, 2010,  
16 contained in the February 24, 2010 scheduling order, will be vacated. A revised scheduling order  
17 will issue once defendants have responded to the third amended complaint.

18 Plaintiff has filed numerous discovery motions which this court will now address:

19 1. May 17, 2010 Motion to Compel Compliance with Subpoena Duces Tecum

20 On May 17, 2010, plaintiff filed a motion to compel production of documents and  
21 things from a non-party. However, it appears some of the documents sought by plaintiff were  
22 subsequently provided by defendants through discovery, i.e. copies of the pertinent photographs.  
23 (Dkt. 47 at 5-6, Ex. A.) Moreover, in light of the orders that follow, it appears plaintiff may  
24 receive additional discovery, and the court will be seeking affidavits from plaintiff's potential  
25 witnesses by separate order. In addition, some of plaintiff's requests contained within the  
26 subpoena duces tecum suffer from the same defects addressed in plaintiff's May 26, 2010 motion

1 to compel further production of documents from defendants. (See ¶2, at 3, below.) Accordingly,  
2 plaintiff's motion to compel compliance with the subpoena duces tecum directed to nonparty will  
3 be denied without prejudice. (Dkt. No. 39.)

4 On May 21, plaintiff filed an application for issuance of subpoena duces tecum  
5 based on plaintiff's motion to compel filed May 17, 2010. In light of the ruling on that motion,  
6 as well as the court's instant ruling on the May 26, 2010 motion to compel production of  
7 documents, plaintiff's May 21, 2010 application will be denied without prejudice. (Dkt. No. 41.)

8 2. May 26, 2010 Motion to Compel Production of Documents

9 Plaintiff seeks an order compelling defendants to provide all documents  
10 responsive to requests one through four and six through eight.

11 Request No. 1: Any and all documents related to training of  
12 Defendants within the meaning of California Code of Regulations,  
13 Article 4, Section 3300 (CCR), including but not limited to types  
14 of training, the time of completion, and format of the directives, is  
relevant to the allegation in the complaint, at paragraphs 15 and 40,  
.....

15 (Mot. at 2-3.) Defendants objected on the grounds the request was overly broad and irrelevant.

16 Defendants' objections are well-taken. Despite plaintiff's contention that "[i]n  
17 plaintiff's demand at page 3, he gave notice to defendants that each request specifically related to  
18 the incident as pleaded in his Complaint, filed on March 25, 2009" (Mot. at 3), plaintiff failed to  
19 identify the specific training for which he was seeking documents. Defendants' objections are  
20 sustained, and plaintiff's motion to compel further response to this request will be denied.

21 Request No. 2: Any and all reports by Solano personnel to the  
22 occurrence of the incident, including but not limited to  
23 investigative reports, incident reports and supplements thereto, is  
relevant to the subject matter as alleged in the complaint at  
paragraph's 14, 26, 37, 38 and 39, . . . .

24 (Mot. at 3.) Defendants objected on the grounds that it invaded the privacy rights of other  
25 inmates, are deemed confidential under Cal. Code Reg., tit. 15, § 3370(d), and are subject to a  
26 qualified privilege as official information. (Opp'n at 3.) Despite these objections, defendants

1 provided plaintiff with two administrative segregation unit placements and a medical report of  
2 injury or unusual occurrence for plaintiff, a staff report by defendant Solarzano relating to the  
3 incident in question, and a staff report by Her relating to the incident in question. (Id.)

4 Defendants maintain they have produced all documents within their possession,  
5 custody or control to plaintiff. Plaintiff has not identified any other documents he seeks  
6 responsive to this request. Accordingly, plaintiff's motion to compel further response to Request  
7 No. 2 will be denied.

8 Request No. 3: Any and all transcripts or minute orders related to  
9 the occurrence of the incident, is relevant to the subject matter as  
alleged in the complaint at paragraph's 36, 37 and 38, . . . .

10 (Mot. at 4.) Defendants responded that they have no such document in their possession, custody  
11 or control. Plaintiff claims inmates Sprague and Carroll were removed from administrative  
12 segregation and taken out to court to answer for criminal charges related to the March 10, 2008  
13 incident on plaintiff. (Id.) Defendants counter that the request fails to identify same.

14 Defendants' objection is well-taken. However, good cause appearing, defendants will be  
15 required to provide plaintiff with the criminal case numbers, and court's name and address,  
16 where inmates Sprague and Carroll were charged with any criminal charges related to the March  
17 10, 2008 incident so that plaintiff may seek records directly from that court, as it may lead to  
18 relevant evidence herein. If no criminal charges were levied against either Sprague or Carroll,  
19 defendants shall provide a declaration stating same. Thus, plaintiff's motion to compel further  
20 response to Request No. 3 will be partially granted.

21 Request No. 4: Any and all statements, in any form, of persons  
22 who witnessed or claim to have witnessed the incident, and/or the  
events immediately prior to or subsequent to the incident. . . .

23 (Mot. at 4.) Defendants objected on the grounds that it invaded the privacy rights of other  
24 inmates, the documents are deemed confidential, or are subject to a qualified privilege as official  
25 information. Despite their objections, defendants provided plaintiff with "two administrative  
26 segregation unit placements and a medical report of injury or unusual occurrence for Inmate Carr;

1 a staff report by Solorzano; and a staff report by Her,” which defendants claim are all responsive  
2 documents in their possession, custody or control. However, defendants also claim they have  
3 provided plaintiff with all “non-confidential responsive documents” in their possession, custody  
4 or control. (Opp’n at 4.)

5 Plaintiff seeks statements by witnesses to the March 10, 2008 incident. Such  
6 witness statements are directly relevant to plaintiff’s claims herein and are subject to production  
7 despite defendants’ objections. Plaintiff’s motion to compel further production responsive to this  
8 request will be granted.

9 If for any reason defendants have a particular statement in their possession,  
10 custody or control, but argue it is confidential, defendants shall provide plaintiff, within thirty  
11 days from the date of this order, a list of each statement, identify the person making the  
12 statement, and shall produce each statement to the court, under seal, for in camera review.  
13 Defendants shall explain why each statement is confidential, with supporting legal authority, and  
14 explain why plaintiff should not have access to such statement.

15 To the extent defendants are aware of any such statements that are not in their  
16 possession, custody or control, defendants shall provide plaintiff, within thirty days from the date  
17 of this order, a list of any and all statements, the person making the statement, and shall identify  
18 the person or agency who has possession, custody or control of each statement. If defendants are  
19 unaware of any statements other than those previously produced to plaintiff, defendants shall file  
20 a declaration attesting to same.

21 Request No. 6: Any and all reports by law enforcement agencies  
22 regarding the occurrence of this incident, including, but not limited  
23 to investigative reports and supplements thereto, is relevant to the  
24 subject matter as alleged in the complaint at paragraphs 7 through  
25 27 and 36 through 39, that inmates Sprague and Carroll were  
26 charged with a felony, . . . .

25 (Mot. at 5.) Defendants object on the grounds that it invaded the privacy rights of other inmates,  
26 are deemed confidential under Cal. Code Reg., tit. 15, § 3370(d), and are subject to a qualified

1 privilege as official information. (Opp'n at 5.) Despite their objections, defendants provided  
2 plaintiff with "two administrative segregation unit placements and a medical report of injury or  
3 unusual occurrence for Inmate Carr; a staff report by Solorzano; and a staff report by Her," which  
4 defendants claim are all responsive documents in their possession, custody or control. (Id.)

5 Plaintiff contends defendants should provide him with all documents related to the  
6 criminal prosecution of Sprague and Carroll because he was a victim in the incident. (Mot. at 5.)  
7 Defendants properly object that these documents are not within their possession, custody or  
8 control. (Opp'n at 5.)

9 However, defendants also state they have provided plaintiff with all "non-  
10 confidential responsive documents in their possession, custody, and control." (Id.) Defendants  
11 have failed to identify the documents not produced or support their position why such documents  
12 are confidential.

13 Thus, plaintiff's motion for further production as to Request No. 6 will be  
14 partially granted. If for any reason defendants have documents responsive to Request No. 6 in  
15 their possession, custody or control, but argue they are confidential, defendants shall provide  
16 plaintiff, within thirty days from the date of this order, a list of each document, identify the  
17 author of the document, and shall produce each document to the court, under seal, for in camera  
18 review. Defendants shall explain why each document is confidential, with supporting legal  
19 authority, and explain why plaintiff should not have access to such document.

20 Request No. 7: Any and all photographs related to the occurrence  
21 of the incident, taken by you or your employers, and/or their  
22 investigators which depict the injuries described in the complaint,  
23 is relevant to the subject matter as alleged in the complaint at  
paragraph 7 through 27 and 36 through 39, which would show the  
actual injury to plaintiff. . . . The photos were taken by CSP  
Solano – Security Squad (Institution Security Unit) (ISU). . . .

24 (Mot. at 5.) Initially, defendants responded that they had no photographs in their possession.  
25 However, subsequently defendants received photographs from ISU and provided copies to  
26 plaintiff, and aver these photos are all they have in their possession, custody or control. (Opp'n

1 at 5-6, Ex. A.) Plaintiff did not file a reply. Accordingly, plaintiff's motion to compel further  
2 response to Request No. 7 will be denied.

3 Request No. 8: Any notes, documents, letters, memoranda, files,  
4 records, record books, logs, grievance reports or written  
5 communications concerning complaints made against defendants  
6 while employed at the California Department of Corrections and  
7 Rehabilitation, is relevant to the subject matter as alleged in  
8 paragraphs 7 through 27 and 36 through 39, that will show 1. a  
9 lack of training, 2. other statements and/or opinions related to the  
10 facts of the occurrence of the incident, and 3. other complaints  
11 made against the officers/defendants related to their  
12 trustworthiness, propensity to lie, and past performances in  
13 situations the same or similar as to the occurrence on March 10,  
14 2008, in Building 8, sometime after 2:00 p.m.

15 (Mot. at 6.) Defendants object that plaintiff's request is overly broad as to time and nature of the  
16 complaints, irrelevant, and not reasonably calculated to lead to the discovery of admissible  
17 evidence. (Opp'n at 6.) Despite their objections, defendants limited the time frame to a period  
18 of five years and responded that there were no responsive documents in their possession, custody  
19 or control.

20 Plaintiff argues that he was seeking information from defendants' personnel files  
21 to find similar complaints lodged against them. (Mot. at 6.) Defendants renew their objections  
22 set forth above. However, defendants "engaged in a reasonable and diligent search for any  
23 responsive information within the last five years, and were unable to locate any." (Opp'n at 6.)  
24 Plaintiff failed to file a reply. Accordingly, plaintiff's motion to compel further response to  
25 Request No. 8 will be denied.

26 3. May 28, 2010 Application for Issuance of Subpoena Duces Tecum

On May 28, 2010, plaintiff filed an application for issuance of subpoena duces  
tecum. Plaintiff recounts his failed efforts to gain authorization to correspond with potential  
inmate witnesses and seeks a subpoena duces tecum to obtain these witnesses' affidavits to  
ascertain whether they are willing to testify at trial. Plaintiff's request for a subpoena duces  
tecum will be denied. However, the court will, by separate order, require these witnesses to

1 inform the court whether or not they are willing to testify voluntarily. Plaintiff's May 28, 2010  
2 application will be denied.

3 4. June 1, 2010 Motion to Extend Discovery Schedule

4 Because the court is sua sponte vacating the discovery and pretrial motions  
5 deadlines, plaintiff's motion is moot and will be denied.

6 For the foregoing reasons, IT IS HEREBY ORDERED that:

7 1. Plaintiff's second amended complaint is dismissed.

8 2. Within thirty days from the date of this order, plaintiff shall complete the  
9 attached Notice of Amendment and submit the following documents to the court:

10 a. The completed Notice of Amendment; and

11 b. An original and one copy of the Third Amended Complaint.

12 Plaintiff's third amended complaint shall comply with the requirements of the Civil Rights Act,  
13 the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint  
14 must also bear the docket number assigned to this case and must be labeled "Amended  
15 Complaint." The third amended complaint shall be complete in and of itself, without reference to  
16 a prior pleading. Failure to file a third amended complaint in accordance with this order may  
17 result in the dismissal of this action.

18 3. Defendants are relieved of their obligation to file an amended answer or other  
19 response pending screening of the third amended complaint.

20 4. The discovery deadline of May 28, 2010 and the pretrial motions filing  
21 deadline of August 20, 2010 are vacated. (See February 24, 2010 scheduling order.) A revised  
22 scheduling order will issue once defendants have responded to the third amended complaint.

23 5. Plaintiff's May 17, 2010 and May 21, 2010 motion and application are denied  
24 without prejudice. (Dkt. Nos. 39 & 41.)

25 6. Plaintiff's May 26, 2010 motion to compel discovery (Dkt. No. 44) is granted  
26 in part and denied in part, as follows:



1 a. Denied as to Requests 1, 2, 7 and 8.

2 b. Plaintiff's motion to compel further response to Request No. 3 is  
3 partially granted. Defendants shall provide plaintiff with the criminal case numbers, and court's  
4 name and address, where inmates Sprague and Carroll were charged with any criminal charges  
5 related to the March 10, 2008 incident so that plaintiff may seek records directly from that court,  
6 as it may lead to relevant evidence herein. If no criminal charges were levied against either  
7 Sprague or Carroll, defendants shall provide a declaration stating same.

8 c. Plaintiff's motion for further production as to Request No. 4 is partially  
9 granted. If for any reason defendants have a particular statement in their possession, custody or  
10 control, but argue it is confidential, defendants shall provide plaintiff, within thirty days from the  
11 date of this order, a list of each statement, identify the person making the statement, and shall  
12 produce each statement to the court, under seal, for in camera review. Defendants shall explain  
13 why each statement is confidential, with supporting legal authority, and explain why plaintiff  
14 should not have access to such statement.

15 To the extent defendants are aware of any such statements that are not in  
16 their possession, custody or control, defendants shall provide plaintiff, within thirty days from the  
17 date of this order, a list of any and all statements, the person or agency making the statement, and  
18 shall identify the person or agency who has possession, custody or control of each statement. If  
19 defendants are unaware of any statements other than those previously produced to plaintiff,  
20 defendants shall file a declaration attesting to same.

21 d. Plaintiff's motion for further production as to Request No. 6 is partially  
22 granted. If defendants have documents responsive to Request No. 6 in their possession, custody  
23 or control, but argue it is confidential, defendants shall provide plaintiff, within thirty days from  
24 the date of this order, a list of each document, identify the author of the document, and shall  
25 produce each document to the court, under seal, for in camera review. Defendants shall explain

26 ///


1 why each document is confidential, with supporting legal authority, and explain why plaintiff  
2 should not have access to such document.

3 7. Plaintiff's May 28, 2010 application is denied. (Dkt. No. 45.)

4 8. Plaintiff's June 1, 2010 motion is denied. (Dkt. No. 46.)

5 DATED: June 18, 2010

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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

ARTHUR CARR,

Plaintiff,

No. 2:09-cv-0826 GEB KJN P

vs.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS, et al.,

Defendants.

NOTICE OF AMENDMENT

\_\_\_\_\_ /

Plaintiff hereby submits the following document in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ Third Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff