

1 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments
2 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.
3 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
4 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §
5 1915(b)(2).

6 Prior to the court's screening of the original complaint, plaintiff filed a document he has
7 entitled "motion for temporary restraining order." ECF No. 7. To the extent that plaintiff seeks a
8 TRO, the requested relief is unclear. Within the motion, plaintiff seeks:

9 a (T.R.O.) temporary restraining order from the court ordering Kern
10 Valley State Prison (A.W.) Warden Martin Bitter to order caption
11 [sic] of IGI investigation unit to allow plaintiff his due process
12 rights of filing a C.D.C.R. appeal while he is being illegal[ly]
13 investigated with a camera in cell and cell heard over loudspeaker
14 everything that is said and done inside plaintiff cell could be heard
15 over loudspeaker including legal research on plaintiff active case
16 which is Case No. 2:13-cv-02192 AC all for IGI year long
17 investigation on plaintiff without allow [sic] plaintiff only due
18 process rights every time plaintiff fil[es] a C.D.C.R. appeal it is
19 screened out and all the unethical conduct by IGI investigators
20 continue.

21 ECF No. 7 at 11.

22 In this document plaintiff also repeatedly states that he did not name an Officer Elise in
23 the original complaint because he only learned of her alleged involvement in the deprivation of
24 his rights after the complaint was filed. Id. at 1-2, 4. The court therefore will construe the motion
25 for a TRO as a motion to amend the original complaint.

26 Rule 15(a)(1) of the Federal Rules of Civil Procedure provides that:

27 A party may amend its pleading once as a matter of course within:

28 (A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is
required, 21 days after service of a responsive pleading or 21 days
after service of a motion under Rule 12(b), (e), or (f), whichever is
earlier.

Id.

In this instance, where the original complaint has not yet been screened, plaintiff is free to

1 file an amended complaint as a matter of course. However, plaintiff is informed that an amended
2 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).
3 Once an amended pleading is filed, the original pleading no longer serves any function in the
4 case. Id.; see also L.R. 220 (every pleading to which an amendment is permitted as a matter of
5 right shall be retyped and filed so that it is complete in itself without reference to the prior
6 pleading.). This means that all claims and allegations must be contained in a single
7 comprehensive complaint. Although the allegations of this pro se complaint are held to “less
8 stringent standards than formal pleadings drafted by lawyers,” Haines v. Kerner, 404 U.S. 519,
9 520 (1972) (per curiam), plaintiff is required to comply with the Federal Rules of Civil Procedure
10 and the Local Rules of the Eastern District of California. Plaintiff will have thirty days to file an
11 amended complaint. If plaintiff fails to amend the complaint, the original complaint will be
12 screened.

13 Accordingly, IT IS ORDERED that:

14 1. Plaintiff’s request for leave to proceed in forma pauperis is granted.

15 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
16 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
17 § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
18 Director of the California Department of Corrections and Rehabilitation filed concurrently
19 herewith.

20 3. Plaintiff’s putative motion for a temporary restraining order (ECF No. 7) is construed
21 as motion to amend the complaint and as such is granted; plaintiff may file an amended complaint
22 within thirty days;

23 4. If plaintiff elects not to amend his complaint, the court will proceed to screen the
24 original complaint.

25 DATED: January 9, 2014

26 
27 ALLISON CLAIRE
28 UNITED STATES MAGISTRATE JUDGE