

1 claim and Fourteenth Amendment due process claim regarding false charges could pass screening
2 if amended. See ECF No. 60, pgs. 10-11. Plaintiff otherwise stated a cognizable Eighth
3 Amendment medical care claim, Fourteenth Amendment due process claim, First Amendment
4 retaliation claim, Eighth Amendment excessive force claim, and Americans with Disabilities Act
5 violation. See ECF No. 60, pgs. 4-11. The Court also advised plaintiff that his Fifth Amendment
6 Miranda rights claim, Fourteenth Amendment prison grievance claim, and Eighth Amendment
7 verbal harassment claim could not pass screening even if plaintiff attempted to amend the
8 complaint. Id.

9 On January 6, 2020, plaintiff filed his fourth amended complaint. See ECF No. 68.
10 However, plaintiff's fourth amended complaint was far more disorganized than his previous
11 complaint. Plaintiff not only failed to correct the deficiencies of his third amended complaint, but
12 also failed to articulate claims which the Court had previously found adequately pled. Because the
13 Court was unable to refer back to prior pleadings to make plaintiff's fourth amended complaint
14 complete, see Local Rule 220, the Court issued an order allowing plaintiff to withdraw his fourth
15 amended complaint and proceed on the valid claims of his third amended complaint. See ECF No.
16 71. The Court also stated that, if plaintiff elected not to withdraw his fourth amended complaint,
17 the Court would issue findings and recommendations that the action be dismissed for failure to
18 state a claim upon which relief can be granted. Id. at 3-4.

19 On July 30, 2020, plaintiff submitted a response to the voluntary withdrawal order.
20 See ECF No. 72. Plaintiff did not take the opportunity to withdraw his fourth amended complaint
21 and proceed on the third amended complaint which stated cognizable claims appropriate for
22 service. Instead, plaintiff charges, as to the Defendant and the Court, that:

23 [They] are Law Enforcement and [their] corruption is endless [sic] and
24 Plaintiff is Garbage and as Garbage has nothing coming. The Court can do
 whatever the Court wants to do because Plaintiff is nothing but Garbage.

25 ECF No. 72, pg. 3.

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1 **II. DISCUSSION**

2 In its July 22, 2020 order, the Court screened plaintiff’s fourth amended complaint
3 and stated that:

4 An amended complaint supersedes the original complaint.
5 See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Because
6 plaintiff amended his third amended complaint, the Court cannot refer to
7 the prior pleading to make plaintiff’s amended complaint complete. See
8 Local Rule 220. An amended complaint must be complete in itself without
9 reference to any prior pleading. See id.

10 Plaintiff’s present fourth amended complaint is far more
11 disorganized and does not rectify the defects in plaintiff’s third amended
12 complaint which were amendable to rectification. Plaintiff’s present
13 complaint does not address plaintiff’s First Amendment access to court
14 claim. Plaintiff’s amended complaint also does not remedy the issues with
15 plaintiff’s previous Fourteenth Amendment false accusation claims
16 because plaintiff only offers one conclusory statement that defendant
17 Rogers made false allegations. See ECF No. 60, pg. 7.

18 In addition, many of plaintiff’s previously cognizable
19 claims are no longer alleged with sufficient detail to pass screening. For
20 example, plaintiff’s third amended complaint states a cognizable Eighth
21 Amendment excessive force claim against “Asian Nurse Doe Defendant”
22 by claiming that “Asian Nurse” dropped her left knee on plaintiff’s hand,
23 shoved her right knee on plaintiff’s abdomen, and threatened to push
24 plaintiff off a gurney. See ECF No. 60, pg. 4. In his present complaint,
25 plaintiff only makes the conclusory assertions that “Asian Nurse”
26 assaulted him and that she is a terrorist. See ECF No. 68, pgs. 7-8.
27 Plaintiff’s fourth amended complaint contains numerous similar instances
28 where plaintiff’s new complaint does not allege sufficient factual
information to state a cognizable claim. Very few, if any, of plaintiff’s
claims would pass screening in his fourth amended complaint.

ECF No. 71, pg. 3.

The Court also stated that:

If plaintiff elects not to withdraw the fourth amended
complaint, the Court will issue findings and recommendations that the
action be dismissed for failure to state a claim upon which relief can be
granted.

Id. at 3-4.

As discussed above, plaintiff has not elected to withdraw his fourth amended
complaint. Therefore, consistent with the Court’s prior analysis set forth above, the Court now
finds that plaintiff’s fourth amended complaint fails to state a cognizable claim and should be
dismissed without further leave to amend.

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III. CONCLUSION

Because it does not appear that plaintiff is willing to correct the deficiencies identified herein by amending the complaint, plaintiff should be afforded no further leave to amend, and the dismissal of the entire action is appropriate. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

Based on the foregoing, the undersigned recommends that plaintiff's action be dismissed without prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: August 5, 2020



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE