

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

Plaintiff, a state prisoner proceeding *pro se*, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983. On September 19, 2011, the Court screened Plaintiff's amended complaint, and dismissed it with leave to amend. On October 17, 2011, Plaintiff filed a notice of appeal. Although directed to do so, Plaintiff has not yet submitted his second amended complaint.

However, out of an abundance of caution, the Court will sua sponte grant Plaintiff an additional twenty days to file his second amended complaint. Plaintiff is advised that the order he is attempting to appeal is not a final, appealable order. Thus, this Court retains jurisdiction, and Plaintiff's 30-day deadline for filing a second amended complaint is not tolled on the basis that Plaintiff has filed a notice of appeal. *See Cohen v. United States*, No. 08-55978, 2010 WL 737837 (9th Cir. March 3, 2010) (unpublished memorandum disposition) ("The district court properly determined that [plaintiff's] attempt to appeal from a nonappealable order did not divest

1 the district court of jurisdiction or toll the time-period for effectuating service, especially in light
2 of the district court's explicit warnings to [plaintiff] that it retained jurisdiction.”).

3 Accordingly, Plaintiff shall file a SECOND AMENDED COMPLAINT within **twenty**
4 **days** from the date this order is filed to cure the deficiencies described in this Court's order filed
5 on September 19, 2011. The second amended complaint must include the caption and civil case
6 number used in this order (C 11-2526 LHK (PR)) and the words SECOND AMENDED
7 COMPLAINT on the first page. Plaintiff may not incorporate material from the prior complaint
8 by reference. **Failure to file a second amended complaint within twenty days, and in**
9 **accordance with this order will result in dismissal of this action.**

10 Plaintiff is advised that an amended complaint supersedes the original complaint. “[A]
11 plaintiff waives all causes of action alleged in the original complaint which are not alleged in the
12 amended complaint.” *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).
13 Defendants not named in an amended complaint are no longer defendants. *See Ferdik v.*
14 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).

15 It is the Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
16 informed of any change of address by filing a separate paper with the clerk headed “Notice of
17 Change of Address,” and must comply with the Court's orders in a timely fashion. Failure to do
18 so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
19 Civil Procedure 41(b).

20 IT IS SO ORDERED.

21 DATED: 11/4/11


LUCY H. KOH
United States District Judge