

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Hon Lau,

Plaintiff,

vs.

Robert Hernandez, Warden, et al.,

Defendants.

CASE NO. 09cv763 WQH (BLM)

ORDER

HAYES, Judge:


On April 13, 2009, Plaintiff, a state prisoner proceeding pro se, filed a civil rights action against Defendants pursuant to 42 U.S.C. § 1983 (Doc. # 1). Plaintiff did not pay the filing fee and filed a motion to proceed *In Forma Pauperis* ("IFP") (Doc. # 2). On June 23, 2009 Plaintiff's motion to proceed IFP was granted, but his claim was dismissed under the screening provisions of 28 U.S.C. §§ 1915(e)(2) and 1915A (Doc. # 6). The dismissal was without prejudice and Plaintiff was granted thirty (30) days to file a First Amended Complaint which cured the deficiencies in his original Complaint (Doc. # 6 at 5). Plaintiff did not file a First Amended Complaint within thirty days. Plaintiff appealed the Court's order to the United States Court of Appeals for the Ninth Circuit on August 17, 2009 (Doc. # 7). The Court of Appeals dismissed his appeal on October 23, 2009 for lack of jurisdiction because this Court's order was "not final or appealable" (Doc. # 10).

IT IS HEREBY ORDERED that the case is re-opened and Plaintiff is **GRANTED** thirty (30) days leave from the date this order is filed in which to file his First Amended Complaint which cures all the deficiencies identified in this Court's order dismissing his claim (Doc. # 6). Plaintiff's Amended Complaint must be complete in itself without reference to the superseded pleading. *See* S.D. Cal. Local Civil Rule 15.1. Defendants not named and claims

1 not re-alleged in the Amended Complaint will be considered waived. *See King v. Atiyeh*, 814
2 F.2d 565, 567 (9th Cir. 1987). Further, if Plaintiff's Amended Complaint fails to state a claim
3 upon which relief may be granted, it may be dismissed without further leave to amend and may
4 hereafter be counted as a "strike" under 28 U.S.C, § 1915(g). *See McHenry v. Renne*, 84 F.3d
5 1172, 1177-79 (9th Cir. 1996). If Plaintiff does not file an amended complaint within thirty
6 days, the case will be closed.

7 **IT IS FURTHER ORDERED** the Clerk of the Court shall mail Plaintiff a copy of this
8 Court's previous order dismissing his claim (Doc. # 6).

9 DATED: November 12, 2009

10 
11 **WILLIAM Q. HAYES**
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28