

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 CLAYTON DEL THIBODEAU, Pro Se,
11 Plaintiff,
12 v.

13 ADT SECURITY SERVICES, a/k/a/
14 ADT HOLDINGS, INC.,
15 Defendant.

Case No.: 3:16-cv-02680-GPC-AGS

ORDER:

**(1) DIRECTING PLAINTIFF TO
FILE COMPLETE AMENDED
COMPLAINT BY DECEMBER 12,
2016 [ECF No. 12];**

**(2) DENYING AS MOOT
DEFENDANT’S MOTION TO
DISMISS [ECF No. 5]**

**(3) VACATING HEARING DATE
SET FOR JANUARY 13, 2017**

16
17
18
19
20
21 On September 27, 2016, Plaintiff Clayton Del Thibodeau (“Plaintiff”), *pro se*, filed
22 a Complaint against Defendant ADT LLC, d/b/a ADT Security Services (“Defendant”),
23 in San Diego Superior Court. (Dkt. No. 1.) Defendant removed the case to this Court on
24 October 28, 2016. (*Id.*) On November 4, 2016, Defendant filed a motion to dismiss
25 Plaintiff’s Complaint. (Dkt. No. 5.) A hearing date on Defendant’s motion was
26 scheduled for January 13, 2017.

27 On November 28, 2016, Plaintiff filed, *nunc pro tunc*, a document entitled
28 “Additional Causes of Action (No. Eleven through No. Nineteen) Amended to Existing

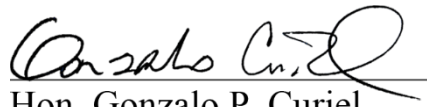
1 Complaint.” (Dkt. No. 12.) Courts “liberally construe pleadings by pro se litigants.”
2 *Aguasin v. Mukasey*, 297 F. App’x 706, 707 (9th Cir. 2008). As such, the Court
3 construes Plaintiff’s document as an Amended Complaint. Plaintiff filed this document
4 within 24 days of service of Defendant’s motion to dismiss by mail, *see* Fed. R. Civ. P.
5 5(b)(2)(C); 6(d), and can thus amend his Complaint as a matter of course, *see*
6 15(a)(1)(B).

7 However, the Court notes that Plaintiff’s Amended Complaint includes only his
8 eleventh through nineteenth causes of action and omits the first ten causes of action in his
9 original Complaint. (Dkt. No. 12 at 1.) Plaintiff is cautioned that the Amended
10 Complaint must be *complete by itself without reference to his original Complaint*,
11 comply with Federal Rule of Civil Procedure 8(a), and that any claim not re-alleged will
12 be considered waived. *See* S.D. Cal. CivLR 15.1; *Hal Roach Studios, Inc. v. Richard*
13 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading
14 supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012)
15 (noting that claims dismissed with leave to amend which are not re-alleged in an
16 amended pleading may be “considered waived if not repled.”). If Plaintiff wishes to
17 continue pursuing his first ten causes of action, originally filed in state court, he must file
18 a complete Amended Complaint with all nineteen causes of action no later than
19 **December 12, 2016**.

20 Because Defendant’s motion to dismiss was based upon Plaintiff’s original
21 Complaint, the Court **DENIES AS MOOT** Defendant’s motion to dismiss (Dkt. No. 5)
22 and **VACATES** the hearing date set for January 13, 2017.

23 **IT IS SO ORDERED.**

24 Dated: November 29, 2016

25 
26 Hon. Gonzalo P. Curiel
27 United States District Judge
28