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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROGELIO MAY RUIZ,
CDCR No. F-59761

Plaintiff,

v.

R. OLIVEIRA; B. SELF; M. VOONG;
CDCR OFFICERS,

Defendant.

Case No.: 3:17-cv-01914-BEN-NLS

ORDER DISMISSING COMPLAINT

Rogelio May Ruiz (“Plaintiff”), currently incarcerated at Corcoran State Prison, and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983. (Doc. No. 1.) Plaintiff’s Complaint contains factual allegations which are written entirely in Spanish. Plaintiff did not prepay the civil filing fee required by 28 U.S.C. § 1914(a) when he filed his Complaint; instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). (Doc. No. 2.)

I. Initial Screening per 28 U.S.C. § 1915A(b)(1)

The Court may conduct a sua sponte review of Plaintiff’s Complaint because he is “incarcerated or detained in any facility [and] is accused of, sentenced for, or adjudicated

1 delinquent for, violations of criminal law or the terms or conditions of parole, probation,
2 pretrial release, or diversionary program.” 28 U.S.C. § 1915A(a), (c). Section 1915A,
3 enacted as part of the Prison Litigation Reform Act (“PLRA”), requires sua sponte
4 dismissal of prisoner complaints, or any portions thereof, which are frivolous, malicious,
5 or fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b); *Resnick*
6 *v. Hayes*, 213 F.3d 443, 446-47 (9th Cir. 2000).

7 “Section 1983 creates a private right of action against individuals who, acting
8 under color of state law, violate federal constitutional or statutory rights.” *Devereaux v.*
9 *Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of
10 substantive rights, but merely provides a method for vindicating federal rights elsewhere
11 conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks
12 and citations omitted). “To establish § 1983 liability, a plaintiff must show both (1)
13 deprivation of a right secured by the Constitution and laws of the United States, and (2)
14 that the deprivation was committed by a person acting under color of state law.” *Tsao v.*
15 *Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

16 A. Rule 8

17 In this matter, the Court finds that Plaintiff’s Complaint fails to comply with Rule
18 8 of the Federal Rules of Civil Procedure, which provides that in order to state a claim for
19 relief in a pleading it must contain “a short and plain statement of the grounds for the
20 court’s jurisdiction” and “a short and plain statement of the claim showing that the
21 pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(1) & (2). “The pleading standard Rule 8
22 announces does not require ‘detailed factual allegations,’ but it demands more than an
23 unadorned, the defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556
24 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555).

25 Here, Plaintiff’s Complaint is written entirely in Spanish. Local Rule 5.1.a.
26 provides, in part, that “[e]ach document filed, including exhibits where practicable, must
27

1 be in English.” CivLR 5.1.a. Thus, the Court finds that Plaintiff’s Complaint falls short
2 of complying with Rule 8 and the Court’s local rules, and for those reasons alone,
3 requires dismissal. Moreover, due to the fact that the Complaint is written entirely in
4 Spanish, the Court is unable to conduct the required sua sponte screening pursuant to 28
5 U.S.C. § 1915A. Therefore, the Court will allow Plaintiff to file an amended pleading,
6 but reminds Plaintiff that it must be written in English. CivLR 5.1.a.

7 **III. Conclusion and Orders**

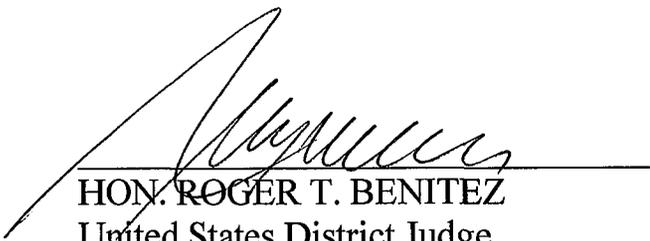
8 For the reasons stated above, Plaintiff’s Complaint is **DISMISSED without**
9 **prejudice** for failing to comply with Federal Rule of Civil Procedure 8(a)(1) and Civil
10 Local Rule 5.1.a. Plaintiff is granted leave to file a First Amended Complaint (“FAC”)
11 within **forty-five (45) days** of the date of this Order that cures the deficiencies identified
12 in this Order. Plaintiff’s Amended Complaint must be complete in itself without
13 reference to his original pleading. Defendants not named and any claims not re-alleged
14 in the Amended Complaint will be considered waived. *See* CivLR 15.1; *Hal Roach*
15 *Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n
16 amended pleading supersedes the original.”); *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928
17 (9th Cir. 2012) (noting that claims dismissed with leave to amend which are not re-
18 alleged in an amended pleading may be “considered waived if not repled.”).

19 Additionally, Plaintiff’s Motion to Proceed IFP is **DENIED as moot and without**
20 **prejudice** to re-file with his amended pleading.

21 The Clerk of Court is directed to mail Plaintiff, together with this Order, a blank
22 copy of the Court’s form “Complaint under the Civil Rights Act, 42 U.S.C. § 1983” for
23 use in amending his pleading.

24 **IT IS SO ORDERED.**

25 DATED: October 12, 2017

26 
27 HON. ROGER T. BENITEZ
28 United States District Judge