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

ALLEN EDWARDS,

Plaintiff,

vs.

P. SHAKIBA, et al.,

Defendants.

Case No. 18cv179-MMA (LL)

**ORDER GRANTING PLAINTIFF’S
MOTION FOR CLARIFICATION**

[Doc. No. 31]

Plaintiff Allen Edwards, a California inmate proceeding *pro se*, instituted this civil rights action against officials at R. J. Donovan Correctional Facility for violation of his Eighth and Fourteenth Amendment rights. *See* Doc. No. 1. Defendants moved to dismiss Plaintiff’s claims pursuant to Federal Rule of Civil Procedure 12(b)(6). *See* Doc. No. 14. The Court denied Defendants’ motion as to Plaintiff’s Eighth Amendment claim but granted Defendants’ motion as to Plaintiff’s Fourteenth Amendment claim. *See* Doc. No. 18. The Court granted Plaintiff leave to file an amended complaint in order to sufficiently allege his Fourteenth Amendment claim. In doing so, the Court admonished Plaintiff that an amended complaint, if any, “must be complete in itself without reference to the original complaint,” and “[a]ny claims not re-alleged in the amended complaint will be considered waived.” *Id.* at 7 (citing S.D. Cal. CivLR 15.1; *King v. Atiyeh*, 814

1 F.2d 565, 567 (9th Cir. 1987)).

2 Plaintiff filed an amended complaint, alleging only a Fourteenth Amendment claim
3 against Defendants; Plaintiff did not re-allege his Eighth Amendment claim. *See* Doc.
4 No. 19. Defendants moved to dismiss this action in its entirety, arguing that Plaintiff
5 waived his Eighth Amendment claim and failed to state a plausible Fourteenth
6 Amendment claim. *See* Doc. No. 22. Plaintiff did not oppose the motion; the Court
7 granted Defendants' motion and dismissed this action without prejudice. *See* Doc. No.
8 24. The Clerk of Court entered judgment accordingly on December 21, 2018. *See* Doc.
9 No. 25.

10 On June 17, 2020, Plaintiff moved to reopen this case, stating only that he had
11 cured the deficiencies in his previous pleadings. *See* Doc. No. 28. Plaintiff attached a
12 proposed second amended complaint to his motion. *See id.* Plaintiff's proposed second
13 amended complaint was in fact a near duplicate of Plaintiff's original complaint.
14 *Compare* Doc. No. 1 *with* Doc. No. 28. The only difference was reflected in Plaintiff's
15 prayer for relief which had been updated to specify the amount of alleged damages and a
16 recent signature. *See* Doc. No. 28 at 12.¹ The Court construed Plaintiff's motion to
17 reopen the case liberally as a motion for relief from judgment pursuant to Federal Rule of
18 Civil Procedure 60(b). *See* Doc. No. 29. The Court denied Plaintiff's motion, stating in
19 pertinent part:

20 Plaintiff has not shown he is entitled to relief from judgment in this case.
21 Plaintiff provides no explanation for why he failed to respond to Defendants'
22 motion to dismiss, seek reconsideration of the Court's dismissal order, or
23 otherwise litigate this action. Meanwhile, it has been more than a year and a
24 half since entry of judgment. Accordingly, even if Plaintiff attempted to
25 demonstrate mistake or excusable neglect – which he does not do – his motion
26 would be untimely. The Court notes further that it dismissed this action
without prejudice. As such, although Plaintiff is not entitled to relief from the
judgment in this case, he may file a new lawsuit in order to pursue his claims.

27
28 ¹ Citations to electronically filed documents refer to the pagination assigned by the CM/ECF system.

1 *Id.* at 2-3.

2 Plaintiff now moves for clarification of the Court’s order denying Plaintiff’s
3 motion to reopen the case. *See* Doc. No. 31. According to Plaintiff, he does not
4 understand how to “comply with the Court’s Order expeditiously.” *Id.* at 1. Upon due
5 consideration of Plaintiff’s *pro se* status, good cause appearing, the Court **GRANTS**
6 Plaintiff’s motion. The Court clarifies its previous order and the status of these
7 proceedings as set forth below.

8 Simply put, there is nothing left for Plaintiff to do in this action. Plaintiff
9 originally brought an Eighth Amendment claim and a Fourteenth Amendment claim
10 against Defendants. *See* Doc. No. 1. The Court found that Plaintiff stated a plausible
11 Eighth Amendment claim but failed to state a plausible Fourteenth Amendment claim.
12 *See generally* Doc. No. 18. The Court granted Plaintiff leave to file an amended
13 complaint to cure the deficiencies in his Fourteenth Amendment claim. *See id.* The
14 Court admonished Plaintiff that an amended complaint would supersede his original
15 complaint and claims not realleged would be waived. *See id.*

16 Plaintiff availed himself of the Court’s leave and filed an amended complaint;
17 however, he did not reallege an Eighth Amendment claim. *See* Doc. No. 19. Defendants
18 moved to dismiss Plaintiff’s amended complaint on the grounds that he still did not state
19 a plausible Fourteenth Amendment claim. *See* Doc. No. 22. Defendants also pointed out
20 that Plaintiff had waived his Eighth Amendment claim. *See id.* Plaintiff had ample time
21 to respond to Defendants’ arguments but did not do so. Based on Plaintiff’s failure to
22 litigate the action, as well as this District’s Civil Local Rules, the Court granted
23 Defendants’ motion and dismissed this action without prejudice. *See* Doc. No. 24.

24 Eighteen months later, Plaintiff moved for relief from the Court’s dismissal order
25 but stated no valid legal grounds for such relief. *See* Doc. No. 28. As such, the Court
26 denied Plaintiff’s motion; the previously entered judgment is valid and this action
27 remains dismissed without prejudice. *See* Doc. No. 29. The case is closed. If Plaintiff
28 wishes to pursue his claims, he must do so by filing a new civil action.

1 Accordingly, the Court **DIRECTS** the Clerk of Court to mail Plaintiff a court-
2 approved civil rights complaint form for his use in filing a new civil action.

3 **IT IS SO ORDERED.**

4 DATE: August 18, 2020



5 HON. MICHAEL M. ANELLO
6 United States District Judge

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