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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

John Henry YABLONSKY  
Plaintiff,  
v.  
CALIFORNIA DEPARTMENT OF  
CORRECTION AND  
REHABILITATION,  
Defendants.

Case No.: 18cv1122-CAB-AGS  
**ORDER DENYING MOTION  
ENTERING OBJECTIONS [Doc. No.  
46]**

On October 7, 2019, Defendants D. Powell, G. Martinez, J. Robles, D. McGuire, R. Blahnik, and C. Tiscarnia (“Defendants”) filed a motion to dismiss Plaintiff’s First Amended Complaint (“FAC”). [Doc. No. 39.] On November 5, 2019, Plaintiff John Henry Yablonsky (“Plaintiff”) filed an opposition. [Doc. No. 35.] On December 13, 2019, Defendants filed a reply. [Doc. No. 36.] On December 31, 2019, Plaintiff filed a sur-reply. [Doc. No. 38.] On June 2, 2020, Magistrate Judge Andrew G. Schopler prepared a Report and Recommendation (“Report”) recommending that the motion to dismiss be granted in part and denied in part. [Doc. No. 39.] On July 14, 2020, this Court issued an order adopting the Report, granting in part and denying in part the motion to

1 dismiss the FAC, and (should Plaintiff wish to amend the claims that were dismissed)<sup>1</sup>  
2 giving Plaintiff until August 7, 2020, to file a Second Amended Complaint (“SAC”).  
3 [Doc. No. 43.] The order also stated that if Plaintiff did not file an SAC (and instead  
4 chose to proceed on the claim in the FAC that was not dismissed)<sup>2</sup>, then Defendants are  
5 to file an answer to the remaining claim in the FAC by August 21, 2020. [Doc. No. 43 at  
6 3.]

7 On July 24, 2020, Plaintiff filed a Motion Entering Objections pursuant to §636  
8 Regarding Courts July 14, 2020 Order. [Doc. No. 46.] In the Motion Plaintiff states he is  
9 confused by the July 14 Order because he does not understand why Defendants would be  
10 filing an answer to the FAC, when he has been granted leave to file an SAC. [Doc. No.  
11 46.] Plaintiff also states that Defendants have already filed an answer to the FAC. [Doc.  
12 No. 46 at 1.] However, the docket does not reflect that Defendants have ever filed an  
13 answer to the FAC. Rather, Defendants filed a motion to dismiss the claims the FAC.  
14 The court then granted the motion to dismiss as to most of the claims, but denied the  
15 motion to dismiss as to the Free Speech claim. Therefore, if Plaintiff does not file an  
16 SAC by August 7, 2020, the case will proceed as to the remaining claim in the FAC (the  
17 Free Speech Claim), and Defendants will then be required to file an answer to that  
18 remaining claim in the FAC.

19 For these reasons, the Court did not err and the motion entering objections is  
20 **DENIED**. Plaintiff is reminded that he has until **August 7, 2020** to file an SAC.<sup>3</sup> If  
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22 <sup>1</sup> The claims that were dismissed with leave to amend were: 1) Access-to-courts; 2) Retaliation (only as  
23 to mail-reading allegations); 3) ADA disability discrimination; and 4) Declaratory relief.

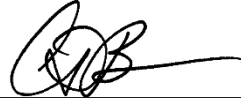
24 <sup>2</sup> The claim that was not dismissed was the Free Speech Claim

25 <sup>3</sup> Plaintiff is again reminded that the Second Amended Complaint must be complete in itself without  
26 reference to his original pleading. Defendants not named and any claims not re-alleged in the Second  
27 Amended Complaint will be considered waived. See S.D. Cal. CivLR 15.1; Hal Roach Studios, Inc. v.  
28 Richard Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir. 1989) (“[A]n amended pleading supersedes  
the original.”); Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims  
dismissed with leave to amend which are not re-alleged in an amended pleading may be “considered  
waived if not repled.”)

1 Plaintiff does not file an SAC by August 7, 2020, then the case will proceed as to the  
2 remaining claim in the FAC, which Defendants are required to answer by August 21,  
3 2020.

4 **IT IS SO ORDERED.**

5 Dated: July 28, 2020



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7 Hon. Cathy Ann Bencivengo  
8 United States District Judge  
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