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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 John Henry YABLONSKY

12 Plaintiff,

13 v.

14 CALIFORNIA DEPARTMENT OF
15 CORRECTION AND
16 REHABILITATION,

17 Defendants.

Case No.: 18cv1122-CAB-AGS

**ORDER REGARDING NOTICE OF
OBJECTION [Doc. No. 51]**

18 On October 7, 2019, Defendants D. Powell, G. Martinez, J. Robles, D. McGuire,
19 R. Blahnik, and C. Tiscarnia (“Defendants”) filed a motion to dismiss Plaintiff’s First
20 Amended Complaint (“FAC”). [Doc. No. 39.] On June 2, 2020, Magistrate Judge
21 Andrew G. Schopler prepared a Report and Recommendation (“Report”) recommending
22 that the motion to dismiss be granted in part and denied in part. [Doc. No. 39.] On July
23 14, 2020, this Court issued an order adopting the Report, granting in part and denying in
24 part the motion to dismiss the FAC, and giving Plaintiff until August 7, 2020, to file a
25 Second Amended Complaint (“SAC”). [Doc. No. 43.] The order also stated that if
26 Plaintiff did not file an SAC, then Defendants were to answer the FAC (as amended by
27 the Court’s order) by August 21, 2020. [Doc. No. 43 at 3.]
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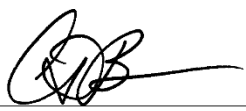
1 On July 24, 2020, Plaintiff filed a Motion Entering Objections pursuant to §636
2 Regarding Courts July 14, 2020 Order. [Doc. No. 46.] On July 28, 2020, the Court
3 issued an order denying the motion entering objections, and indicated that the only claim
4 in the FAC that had not been dismissed was the Free Speech Claim. [Doc. No. 48 at 2.]
5 On August 11, 2020, Plaintiff filed an objection to the July 28 order, arguing that the
6 Retaliation claim in the FAC – other than the reading legal mail claim – also was not
7 dismissed. [Doc. No. 51.] Plaintiff is correct. The Retaliation claim in the FAC – except
8 for the reading legal mail claim – was not dismissed. [See Doc. No. 39 at 12, 16; Doc.
9 No. 43 at 2-3.]

10 Given the Court’s error in the July 28 order, Plaintiff will be given **ONE FINAL**
11 **OPPORTUNITY** to file a SAC. Plaintiff shall have until **September 4, 2020** to file a
12 SAC. Plaintiff is again reminded that the SAC must be complete in itself without
13 reference to his original pleading. Defendants not named and any claims not re-alleged in
14 the Second Amended Complaint will be considered waived. See S.D. Cal. CivLR 15.1;
15 Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1546 (9th Cir.
16 1989) (“[A]n amended pleading supersedes the original.”); Lacey v. Maricopa Cnty., 693
17 F.3d 896, 928 (9th Cir. 2012) (noting that claims dismissed with leave to amend which
18 are not re-alleged in an amended pleading may be “considered waived if not repled.”)

19 If Plaintiff does not file a SAC by September 4, 2020, then the case will proceed as
20 to the remaining claims in the FAC (the Free Speech claim and the Retaliation claim--
21 except for the reading legal mail claim), which Defendants are required to answer by
22 **September 28, 2020**.

23 IT IS SO ORDERED.

24 Dated: August 14, 2020

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26 _____
27 Hon. Cathy Ann Bencivengo
28 United States District Judge