

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02851-BNB

CARRILLO FRANCO,

Plaintiff,

v.

LT. SOLBA, Food Service Department, Official and Individual Capacity,
STURGEON, Nurse Practitioner, Defendant, Official and Individual Capacity,
CINDY NOLD, 16789, Defendant, Official and Individual Capacity,
KERRY BARONI, 16025, Defendant, Official and Individual Capacity,
GRIFFITH MARSHALL, 14298, Defendant, Official and Individual Capacity,
ANTHONY A. DECESARO, Defendant, Official and Individual Capacity, and

Defendants.

ORDER DIRECTING PLAINTIFF TO FILE
SECOND AND FINAL AMENDED COMPLAINT

Plaintiff, Carrillo Franco, is in the custody of the Colorado Department of Corrections at the Buena Vista Correctional Facility. He has filed, *pro se*, a Prisoner Complaint alleging deprivations of his constitutional rights pursuant to 28 U.S.C. § 1343 and 42 U.S.C. § 1983. Mr. Franco has paid the applicable \$400.00 filing fee.

On November 6, 2013, Magistrate Judge Boyd N. Boland reviewed the Complaint and determined that it was deficient because Plaintiff failed to allege the personal participation of each named Defendant in a deprivation of his constitutional rights. Magistrate Judge Boland thus ordered Mr. Franco to file an amended complaint on the court-approved Prisoner Complaint form within thirty days. Mr. Franco filed an "Amended Complaint" on December 3, 2013 [Doc. # 6]. However, the December 3 pleading does not include all of the factual allegations in support of the legal claims

asserted in the original Complaint. Instead, Mr. Franco adds new allegations that he asks the Court to incorporate by reference into his original Complaint.

The Court is not required to construe together Plaintiff's original Complaint and Amended Complaint. To the contrary, an amended complaint supercedes and replaces the original and all other prior complaints. *Mink v. Suthers*, 482 F.3d 1244 (10th Cir. 2007) (citing *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir.2000)); *Gilles v. United States*, 906 F.2d 1386, 1389 (10th Cir.1990) (“[A] pleading that has been amended under Rule 15(a) supersedes the pleading it modifies”) (internal quotation marks omitted). Plaintiff will be afforded one final opportunity to include all of his allegations and claims in a single pleading titled “Second Amended Complaint.” Accordingly, it is

ORDERED that Plaintiff, Carillo Franco, file **within thirty (30) days from the date of this order**, a Second Amended Complaint that includes all of his allegations and claims for relief. It is

FURTHER ORDERED that Mr. Franco, shall obtain the court-approved Prisoner Complaint form (with the assistance of his case manager or facility's legal assistant), along with the applicable instructions, at www.cod.uscourts.gov. It is

FURTHER ORDERED that, if Mr. Franco fails to file a Second Amended Complaint that complies with this order within the time allowed, the Court may dismiss some of the claims and defendants without further notice for the reasons discussed above. It is

DATED December 6, 2013, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge