

MAR 29 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARVELLOUS A. GREENE,

Plaintiff - Appellant,

v.

J. JONES, Lieutenant, CCI; et al.,

Defendants - Appellees.

No. 09-15414

D.C. No. 1:08-CV-00677-CRB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Charles R. Breyer, District Judge, Presiding

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Marvellous A. Greene, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging that strip searches conducted at California Correctional Institution ("CCI") violated his

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

constitutional rights. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we vacate and remand.

The district court's February 12, 2009 order of dismissal evaluates only Greene's original complaint, although Greene filed a first amended complaint on June 23, 2008. *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997) (“[An] amended complaint supercedes the original, the latter being treated thereafter as non-existent.”). Accordingly, we vacate the judgment and remand for further proceedings.

On remand, the district court should provide Greene leave to file a second amended complaint, after apprising him of the deficiencies in the original and amended complaints and the requirement that an amended complaint be complete in and of itself. We also draw the district court's attention to Greene's claim that Muslim inmates at CCI were singled-out for strip searches, whereas inmates of other religions were not.

Greene shall bear his own costs on appeal.

VACATED and REMANDED.