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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL HORNE,
Plaintiff,
v.
DORATHY HARRIS,
Defendant.

No. 2:15-cv-2388 MCD CKD PS

ORDER

Plaintiff is proceeding in this action pro se and in forma pauperis. On November 23, 2015, plaintiff's complaint was dismissed with leave to amend. Plaintiff did not timely file an amended complaint and the court accordingly recommended that the action be dismissed. Plaintiff has now filed objections in which he states he did not receive the findings and recommendations. Plaintiff does not explain, however, why he did not timely file an amended complaint. Plaintiff has, however, submitted a copy of a prescription for a service animal. The court will therefore vacate the findings and recommendations and allow plaintiff an extension of time to file an amended complaint. Plaintiff is cautioned that he must file an amended complaint in a timely fashion or the court will recommend that the action be dismissed.

In filing the amended complaint, plaintiff is again advised of the following. In an amended complaint, plaintiff must set forth the jurisdictional grounds upon which the court's jurisdiction depends. Federal Rule of Civil Procedure 8(a).

1 Further, plaintiff must demonstrate how the conduct complained of has resulted in a deprivation
2 of plaintiff's federal rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980).

3 It appears that plaintiff may be trying to state a claim under the Fair Housing Act for
4 failure to accommodate plaintiff's disability. To state such a claim, plaintiff must allege facts
5 showing the following: "(1) that the plaintiff is handicapped within the meaning of 42 U.S.C. §
6 3602(h); (2) that the defendant knew or should reasonably be expected to know of the handicap;
7 (3) that accommodation of the handicap may be necessary to afford the handicapped person an
8 equal opportunity to use and enjoy the dwelling; (4) that the accommodation is reasonable; and
9 (5) that defendant refused to make the requested accommodation." DuBois v. Assoc. of
10 Apartment Owners of 2987 Kalakaua, 453 F.3d 1175, 1179 (9th Cir. 2006); see also
11 Intermountain Fair Hous. Council v. CVE Falls Park, L.L.C., No. 2:10-CV-00346-BLW, 2011
12 WL 2945824, at *6 (D. Idaho July 20, 2011); 24 C.F.R. § 100.65(b)(1) (federal fair housing
13 regulations prohibit using security deposits because of handicap). Plaintiff should attach as an
14 exhibit to the amended complaint a copy of the prescription for a service animal. It is not clear
15 from plaintiff's complaint whether he presently owns a service animal; in any amended complaint
16 plaintiff should clarify whether he presently uses a service animal or has access to an animal
17 trained in the services plaintiff's needs for his alleged handicap.

18 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
19 make plaintiff's amended complaint complete. Local Rule 15-220 requires that an amended
20 complaint be complete in itself without reference to any prior pleading. This is because, as a
21 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
22 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
23 longer serves any function in the case. Therefore, in an amended complaint, as in an
24 original complaint, each claim and the involvement of each defendant must be sufficiently
25 alleged.

26 In accordance with the above, IT IS HEREBY ORDERED that:

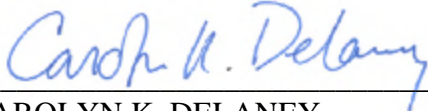
27 1. The findings and recommendations filed January 6, 2016 (ECF No. 5) are vacated;

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2. Plaintiff is granted an additional thirty days from the date of service of this order to file an amended complaint that complies with the requirements of the Federal Rules of Civil Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number assigned this case and must be labeled “Amended Complaint”; plaintiff must file an original and two copies of the amended complaint; failure to file an amended complaint in accordance with this order will result in a recommendation that this action be dismissed.

Dated: January 22, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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