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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Thomas J. McCoy ,

No. CV-11-8069-PCT-GMS

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Plaintiff,

ORDER

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vs.

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Federal Home Loan Mortgage Ass'n et.
al.,

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Defendants.

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Plaintiff has filed an Amended Complaint and Motion for Leave to Proceed in Forma Pauperis (Docs. 5, 6). The Court grants the Motion for Leave to Proceed in Forma Pauperis and again dismisses the Amended Complaint. It will give Plaintiff one more chance to amend his complaint to state a claim.

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Plaintiff's First Amended Complaint ("FAC") (Doc. 5), alleges that this Court has diversity jurisdiction over his claims because "The Defend (sic) in this case is Federal Home Loan Mortgage Ass'n." and it is based in Fairfax County Virginia, and Plaintiff is seeking more than \$75,000 in damages."

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Nevertheless, there are several problems with this argument. An Amended Complaint supersedes all previous complaints. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) As a result, as a matter of law, allegations that existed in the previous complaint that have not been realleged in the amended complaint, are no longer of any force in the lawsuit. "All causes

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1 of action alleged in an original complaint which are not alleged in an amended complaint are
2 waived.” *Id.* Citing *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).
3 Therefore, each of the Defendants and claims from previous complaints that a Plaintiff
4 wishes to reallege in his amended complaint, must be repeated in the amended complaint.
5 They cannot be incorporated by reference. *See* LRCiv. 15.1. Plaintiff does not appear to
6 have followed this rule. It appears that he believes that the allegations of his original
7 complaint remain in force, but they do not.

8 Federal Rules of Civil Procedure 15(a) authorized Plaintiff to amend his complaint,
9 which he did. His amended complaint now governs this action.

10 To the extent the FAC alleges, as it does, that the Defendant Federal Home Loan
11 Mortgage Ass’n is domiciled in Virginia and his claims exceed \$75,000, the complaint
12 adequately pleads the existence of diversity jurisdiction against the FHLMA. (Absent from
13 the FAC is any allegation that the Plaintiff is an Arizona resident. Nevertheless, because
14 Court’s read pro se complaints liberally, the Court is willing to assume for present purposes
15 that Plaintiff intends to plead that he is an Arizona resident.) Diversity jurisdiction, however,
16 is destroyed to the extent that Plaintiff also intends to name Arizona residents as Defendants
17 to his claims. While his original complaint asserts claims against other Arizona residents.
18 His FAC does not. Therefore, the Court is willing to assume that Plaintiff has adequately
19 pleaded the existence of diversity jurisdiction against the only Defendant mentioned in the
20 FAC.

21 Nevertheless, to survive dismissal for failure to state a claim pursuant to Federal Rule
22 of Civil Procedure 12(b)(6), a complaint must contain more than “labels and conclusions”
23 or a “formulaic recitation of the elements of a cause of action[;]” it must contain factual
24 allegations sufficient to “raise a right to relief above the speculative level.” *Bell Atl. Corp.*
25 *v. Twombly*, 550 U.S. 544, 555 (2007). “A claim has facial plausibility when the plaintiff
26 pleads factual content that allows the court to draw the reasonable inference that the
27 defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949
28 (2009) (citing *Twombly*, 550 U.S. at 556). The FAC does nothing to identify or state

1 Plaintiff's claims against the FHLMA. A preliminary review of the FAC demonstrates that
2 Plaintiff's sparse allegations are insufficient to put the Defendant on notice of the nature of
3 the Plaintiff's claims against it. *See Jackson v. Nelson*, 405 F.2d 872, 873 (9th Cir. 1968)
4 (affirming dismissal where the complaint did not specify which defendants took which
5 actions); *Allied Steel & Tractor Prods., Inc. v. First Nat'l Bank of N.Y.*, 54 F.R.D. 256, 260
6 (N.D. Ohio 1971) (discussing that even under "liberalized pleading requirements[,] "merely
7 identifying a party as a defendant without alleging more" violates Federal Rule of Civil
8 Procedure 8). Plaintiff's FAC mentions a claim pursuant to 42 U.S.C. § 1983, but such
9 claims can only be brought against persons who are acting under the color of state law, and
10 in a state capacity, and who are alleged to have deprived the Plaintiff of his federal rights.
11 It is not clear to this court how the FHLMA could be acting under the authority of state law,
12 and how it deprived Defendant of his federally-protected rights. Plaintiff's assertions about
13 his title history indicating that the land originally came from a federal patent, do nothing in
14 and of themselves to establish a § 1983 claim.. Accordingly, Plaintiff's FAC is dismissed.
15 Should Plaintiff choose to file a second amended complaint, Plaintiff must identify specific
16 legal claims against the Defendant or Defendants, further specify which Defendants are liable
17 for which claims and must include factual detail supporting each assertion. Therefore,

18 **IT IS HEREBY ORDERED** granting the Motion for Leave to Proceed in forma
19 pauperis (Doc. 6).

20 **IT IS FURTHER ORDERED** dismissing the First Amended Complaint (Doc. 5)
21 with leave to file a Second Amended Complaint by **July 25, 2011**.

22 **IT IS FURTHER ORDERED** that if Plaintiff elects not to file a Second Amended
23 Complaint by **July 25, 2011**, the Clerk of the Court is directed to dismiss this action without
24 further Order of the Court.

25 **IT IS FURTHER ORDERED** that if Plaintiff elects to file a Second Amended
26 Complaint, the Complaint may not be served until and unless the Court screens the Second
27 Amended Complaint pursuant to 18 U.S.C. § 1915(e)(2).

28 DATED this 24th day of June, 2011.

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G. Murray Snow

G. Murray Snow
United States District Judge