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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STRIDER ROGNIRHAR, a.k.a.
JONATHAN A. PICOLLO,

Plaintiff,

vs.

N. GRANNIS and MATTHEW CATE,

Defendants.

NO. CV-08-892-LRS

ORDER DIRECTING AMENDMENT OF
COMPLAINT PURSUANT TO THE MANDATE

Pursuant to the Mandate of the Ninth Circuit Court of Appeals filed and entered on January 18, 2012 (ECF No. 16), the captioned matter has been remanded to this court for further proceedings, which necessitates plaintiff to amend his Complaint against defendants Grannis and Cate to state a Religious Land Use and Institutionalized Persons Act ("RLUIPA") claim upon which relief may be granted. The Ninth Circuit Mandate further states that should California promulgate its proposed amendment to § 3062(h) after the case is returned to the district court, the district court will then determine whether the new provision does, in fact, moot the case.

Rognirhar's Complaint alleged that defendants violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA") and the First Amendment by refusing to grant him a religious exemption

1 from California's prison grooming regulation, which prohibits inmates
2 from maintaining facial hair that extends more than one-half inch
3 outward from the face. See Cal. Code Regs. tit 15, § 3062(h). This
4 Court notes, however, that subsections (a)-(c) and (e)-(h) of § 3062
5 were amended, effective on January 21, 2012. Therefore, in addition
6 to amending his Complaint, Mr. Rognirhar shall explain why his RLUIPA
7 claim is not moot against Defendants N. Grannis and Cate in light of
8 the recent amendments to § 3062. The Ninth Circuit additionally found
9 that Rognirhar's claims against S.R. Moore and R. Russell were moot.

10 **OPPORTUNITY TO AMEND OR VOLUNTARILY DISMISS COMPLAINT**

11 Unless it is absolutely clear that amendment would be futile, a
12 pro se litigant must be given the opportunity to amend his complaint
13 to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448
14 (9th Cir. 1987). Plaintiff may submit an amended complaint within
15 sixty (60) days of the date of this Order which includes sufficient
16 facts to establish federal subject-matter jurisdiction. *Broughton v.*
17 *Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir. 1980) (citations
18 omitted).

19 Plaintiff's amended complaint shall consist of a short and plain
20 statement showing he is entitled to relief. Plaintiff shall allege
21 with specificity the following:

22 (1) the names of the persons who caused or personally
23 participated in causing the alleged deprivation of his constitutional
24 rights,

25 (2) the dates on which the conduct of each Defendant allegedly
26 took place, and

1 (3) the specific conduct or action Plaintiff alleges is
2 unconstitutional.

3 Furthermore, Plaintiff shall set forth his factual allegations in
4 separate numbered paragraphs. THIS AMENDED COMPLAINT WILL OPERATE AS
5 A COMPLETE SUBSTITUTE FOR (RATHER THAN A MERE SUPPLEMENT TO) THE
6 PRESENT COMPLAINT. Plaintiff shall present his complaint on the form
7 provided by the court as required by the Local Rules for the Eastern
8 District of California. The amended complaint must be legibly
9 rewritten or retyped in its entirety, it should be an original and not
10 a copy, it may not incorporate any part of the original complaint by
11 reference, and IT MUST BE CLEARLY LABELED THE "FIRST AMENDED
12 COMPLAINT" and cause number CV-08-0892-LRS must be written in the
13 caption. Additionally, Plaintiff must submit a copy of the "First
14 Amended Complaint" for service on each named Defendant, and a copy for
15 service on the State Attorney General.

16 PLAINTIFF IS CAUTIONED IF HE FAILS TO AMEND WITHIN 60 DAYS AS
17 DIRECTED, THE COURT WILL DISMISS THE COMPLAINT FOR FAILURE TO STATE A
18 CLAIM UNDER 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1). Pursuant to 28
19 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner, who brings three
20 or more civil actions or appeals which are dismissed on grounds they
21 are legally frivolous, malicious, or fail to state a claim, will be
22 precluded from bringing any other civil action or appeal in forma
23 pauperis "unless the prisoner is under imminent danger of serious
24 physical injury." 28 U.S.C. § 1915(g).

25 If Plaintiff chooses to amend his complaint and the court finds
26 the amended complaint is frivolous, malicious, or fails to state a
27

1 claim, the amended complaint will be dismissed pursuant to 28 U.S.C.
2 §§ 1915A(b) (1) and 1915(e) (2). Such a dismissal would count as one of
3 the dismissals under 28 U.S.C. § 1915(g).

4 Alternatively, the court will permit Plaintiff to voluntarily
5 dismiss his Complaint pursuant to Rule 41(a), Federal Rules of Civil
6 Procedure. Plaintiff may submit the attached Motion to Voluntarily
7 Dismiss the Complaint within sixty (60) days of the date of this Order
8 or risk dismissal under 28 U.S.C. §§ 1915A(b) (1) and 1915(e) (2), and a
9 "strike" under 28 U.S.C. § 1915(g). A voluntary dismissal within this
10 60 day period will not count as a strike.

11 Plaintiff is still obligated to pay the full filing fee of
12 \$150.00. However, if Plaintiff elects to take a voluntary dismissal
13 within the 60 day period, Plaintiff may simultaneously file a separate
14 Affidavit and Motion to waive collection of the remaining balance of
15 the filing fee in this action. The court will grant such a motion
16 only for good cause shown. In no event will prior partial payments be
17 refunded to Plaintiff.

18 **IT IS SO ORDERED.** The District Court Executive is directed to
19 enter this Order and forward a copy to Plaintiff with a civil rights
20 complaint form. Pursuant to the Mandate, Defendants S.R. Moore and
21 R. Russell are dismissed. ECF No. 16 at 3.

22 **DATED** this 13th day of March, 2012.

23
24 _____ **s/Lonny R. Suko**

25 LONNY R. SUKO
26 UNITED STATES DISTRICT JUDGE
