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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HOWARD ALAN ZOCHLINSKI,

Plaintiff,

v.

REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al.,

Defendant.

No. 2:10-cv-1824-KJM-KJN-PS

ORDER

On June 10, 2014, the Ninth Circuit Court of Appeals issued a memorandum opinion that affirmed in part and reversed in part the August 11, 2011 order (ECF No. 45) granting defendants’ motion to dismiss and dismissing plaintiff’s complaint without leave to amend. (ECF No. 62.)¹ In particular, the opinion affirmed the dismissal of plaintiff’s claims under 42 U.S.C. §§ 1981, 1982, 1983, 1985, and 1986 against the Regents of the University of California, and his damages claims under these provisions against John Oakley and John Jones, Jr. in their official capacities. (Id. at 2.) The opinion further affirmed the dismissal of plaintiff’s conspiracy claims under 42 U.S.C. §§ 1982 and 1983, and claims under Title II, IV, VI, and VII of the Civil Rights Act against all defendants. (Id.) However, the opinion reversed the dismissal of plaintiff’s equal

¹ The June 10, 2014 mandate took effect on October 7, 2014, when it became the formal mandate of the Ninth Circuit Court of Appeals pursuant to Federal Rule of Appellate Procedure 41(a). (ECF No. 64.)

1 protection claim under 42 U.S.C. § 1981 against John Jones, Jr. and defamation plus claim under
2 42 U.S.C. § 1983 against John Oakley and John Jones, Jr. to the extent that this claim is asserted
3 against these defendants in their individual capacities. (Id. at 3.) The opinion also reversed the
4 dismissal of plaintiff's state law claims for defamation, intentional infliction of emotional
5 distress, and violations of the Unruh Civil Rights Act, Cal. Civ. Code §§ 51 et seq. (Id. at 4.)
6 The Ninth Circuit Court of Appeals remanded this action to this court for further proceedings in
7 accordance with its opinion. (Id. at 5.)

8 In light of this mandate, the court will vacate the judgment dated August 11, 2011 (ECF
9 No. 46) insofar as it concerns plaintiff's following claims: (1) equal protection claim under 42
10 U.S.C. § 1981 against John Jones, Jr.; (2) defamation plus claim under 42 U.S.C. § 1983 against
11 John Oakley and John Jones, Jr. to the extent that the claim is asserted against these defendants in
12 their individual capacities; (3) defamation; (4) intentional infliction of emotional distress; and (5)
13 violations of California's Unruh Civil Rights Act.²

14 In its mandate, the Ninth Circuit Court of Appeals stated that "[t]he district court abused
15 its discretion in denying [plaintiff] leave to amend and provide factual specificity regarding his
16 timely state law claims, and his §§ 1981 and 1983 claims against the individual defendants."
17 (ECF No. 62 at 4.) Accordingly, the court will grant plaintiff an opportunity to file an amended
18 complaint providing further factual specificity with respect to the five claims detailed above.³
19 Plaintiff shall file either an amended complaint in compliance with this order or a statement that
20 he wishes to proceed on his original complaint as modified by the Ninth Circuit Court of
21 Appeals' opinion by no later than March 13, 2015. Defendants shall file a response to plaintiff's

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24 ² This action proceeds before the undersigned pursuant to Eastern District of California Local
25 Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). This action was referred to the undersigned "for new
26 proceedings in light of the Ninth Circuit's opinion." (ECF No. 65.)

27 ³ Plaintiff may amend his factual allegations only with respect to these five claims. Plaintiff is
28 cautioned that if he attempts to allege any additional claims or name any additional defendants in
his amended complaint, should he decide to file one, then such additional allegations will be
summarily dismissed.

1 complaint (as amended or as modified depending on plaintiff's filing) by no later than **April 9,**
2 **2015.**

3 In light of the foregoing, IT IS HEREBY ORDERED that:


4 1. The judgment dated August 11, 2011 (ECF No. 46) is VACATED insofar as it
5 concerns plaintiff's following claims: (1) § 1981 equal protection claim against John Jones, Jr.;
6 (2) § 1983 defamation plus claim against John Oakley and John Jones, Jr. to the extent that the
7 claim is asserted against these defendants in their individual capacities; (3) defamation; (4)
8 infliction of emotional distress; and (5) violations of California's Unruh Civil Rights Act.

9 2. Plaintiff shall file *either* an amended complaint in compliance with this order *or* a
10 statement that he wishes to proceed on his original complaint as modified by the Ninth Circuit
11 Court of Appeals' opinion by no later than **March 13, 2015.**

12 3. Defendants shall file a response to plaintiff's complaint by no later than **April 10,**
13 **2015.**

14 IT IS SO ORDERED.

15 Dated: February 12, 2015

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18 KENDALL J. NEWMAN
19 UNITED STATES MAGISTRATE JUDGE
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