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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES L. DAVIS,

Plaintiff,

No. 2:10-cv-2972 MCE CKD P

vs.

SCHROEDER, et al.,

Defendants.

ORDER &

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_/

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff commenced this action on November 4, 2010. (Dkt. No. 1.) On April 13, 2012, the undersigned granted plaintiff leave to file a third amended complaint “not longer than 20 pages.” (Dkt. No. 16 at 4.) After plaintiff disregarded this page limit, the undersigned on July 30, 2012 granted plaintiff leave to file a fourth amended complaint “not longer than 20 pages[.] . . . Failure to file an amended complaint, or to adhere to the page limit, will result in a recommendation that this action be dismissed.” (Dkt. No. 24 at 2.) On December 5, 2012, the district court affirmed this court’s July 30, 2012 order. (Dkt. No. 27.)

Despite the clear language of the July 30, 2012 order, plaintiff has submitted a proposed amended complaint over sixty pages in length. (Dkt. No. 26, Ex. I.) Accordingly, the

1 undersigned will recommend that this action be dismissed pursuant to Rule 41(b) of the Federal  
2 Rules of Civil Procedure. See Nasious v. Two Unknown B.I.C.E. Agents, at Arapahoe County  
3 Justice Center, 492 F.3d 1158, 1161, n.2 (10th Cir. 2007) (“Although the language of Rule 41(b)  
4 requires that the defendant file a motion to dismiss, the Rule has long been interpreted to permit  
5 courts [as here] to dismiss actions sua sponte for a plaintiff’s failure to . . . comply with the rules  
6 of civil procedure or court’s orders.”) (internal citation omitted).

7 Plaintiff currently has two motions pending. On August 30, 2012, plaintiff filed a  
8 motion to intervene (Dkt. No. 25), which the court construes as a motion for disqualification of  
9 Magistrate Judge Delaney. The court will deny this motion for the reasons set forth in its May 22,  
10 2012 order, affirmed by the district court on December 5, 2012. (Dkt. Nos. 20, 27.)

11 On September 5, 2012, plaintiff sought leave to file an amended complaint,  
12 attached as Exhibit I. (Dkt. No. 26.) The court will deny this motion as moot in light of its July  
13 30, 2012 order granting leave to file a fourth amended complaint, not longer than 20 pages. As set  
14 forth above, plaintiff has disregarded that order and this action should be dismissed pursuant to  
15 Rule 41(b).

16 Accordingly, IT IS HEREBY ORDERED THAT:

- 17 1. Plaintiff’s motion to intervene (Dkt. No. 25) is denied;  
18 2. Plaintiff’s motion for leave to file an amended complaint (Dkt. No. 26) is denied  
19 as moot.

20 IT IS HEREBY RECOMMENDED THAT this action be dismissed pursuant to  
21 Rule 41(b) of the Federal Rules of Civil Procedure.

22 These findings and recommendations are submitted to the United States District  
23 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
24 days after being served with these findings and recommendations, any party may file written  
25 objections with the court and serve a copy on all parties. Such a document should be captioned  
26 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections

1 shall be served and filed within fourteen days after service of the objections. The parties are  
2 advised that failure to file objections within the specified time may waive the right to appeal the  
3 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: December 6, 2012

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6 CAROLYN K. DELANEY  
7 UNITED STATES MAGISTRATE JUDGE

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