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

CHRISTOPHER D. SCHNEIDER, No. CIV

No. CIV S-10-3242 GEB EFB PS

Plaintiff,

VS.

AMADOR COUNTY, et al., ORDER

Defendants.

This case, in which plaintiff is proceeding *pro se*, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1). On December 6, 2010, plaintiff filed a complaint against Amador County, Linda Van Vleck (an Amador County code enforcement officer), and John Hahn (an Amador County counsel) alleging, among other things, violations of plaintiff's Fourteenth and Fifth Amendment rights to due process, civil conspiracy, negligence, and violations of 42 U.S.C. § 1983 and numerous state statutes. Dckt. No. 1. On December 27, 2010, defendants filed a motion to dismiss that complaint, Dckt. No. 9, and noticed the motion for hearing on February 2, 2011.

However, also on December 27, 2010, plaintiff filed an amended complaint pursuant to Federal Rule of Civil Procedure 15(a)(1). Effective December 1, 2009, Rule 15(a)(1) provides that "[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after

service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier." Because plaintiff's amended complaint was filed within 21 days of the date he served his initial complaint (on December 6, 2010, *see* Dckt. No. 4) and within 21 days of the date defendants served their motion to dismiss pursuant to Rule 12(b), plaintiff was entitled to amend his complaint "as a matter of course."

In light of plaintiff's amended complaint, defendants' motion to dismiss plaintiff's original complaint is denied as moot. The amended complaint supersedes the earlier complaint which defendants have moved to dismiss, rendering the earlier complaint of no legal effect and the motion to dismiss moot. *See Ramirez v. Silgan Containers*, 2007 WL 1241829, at *6 (Apr. 26, 2007).

Accordingly, it is HEREBY ORDERED that:

- 1. Defendants' motion to dismiss, Dckt. No. 9, is denied as moot; and
- 2. The February 2, 2011 hearing on that motion is vacated.

DATED: December 29, 2010

EDMUND F. BRENNAN

UNITED STATES MAGISTRATE JUDGE

¹ The former version of Rule 15(a)(1) provided that "[a] party may amend its pleading once as a matter of course: (A) before being served with a responsive pleading; or (B) within 20 days after serving the pleading if a responsive pleading is not allowed and the action is not yet on the trial calendar."