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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HOWARD ALAN ZOCHLINSKI,
Plaintiff,
v.
RICHARD C. BLUM, et al.,
Defendants.

No. 2:11-cv-3295-KJM-KJN-PS

ORDER

On January 13, 2015, the assigned District Judge issued an order adopting in part the undersigned’s April 2, 2014 findings and recommendations regarding plaintiff’s response to the court’s November 19, 2013 order to show cause why this action should not be dismissed on mootness grounds. (ECF No. 69.) In this order, the District Judge declined to adopt the recommendation that plaintiff’s claims based on the Due Process Clause and other contractual rights be dismissed as barred by the doctrine of mootness. (ECF No. 69 at 6.) Nevertheless, the District Judge adopted the findings and recommendations “in all other respects,” including the undersigned’s determination that the complaint did “not contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2),” and recommendation that plaintiff be granted leave to amend his complaint with regard “to his claims based on the First and Fourteenth Amendments, the Americans with Disabilities Act, and related California statute claims . . . to the extent that such claims are not barred by the applicable statutes of limitations.” (ECF No. 63 at 11-12; ECF No.

1 69 at 6.) Finally, the District Judge referred this matter back to the undersigned for further
2 proceedings in accordance with the order.

3 In light of this order, the undersigned will grant plaintiff **30 days** to file an amended
4 complaint with regard to all of the claims asserted in his original complaint. As noted in the
5 court's previous orders, the allegations in plaintiff's complaint do not presently comply with the
6 requirements of Federal Rule of Civil Procedure 8. (ECF No. 42 at 4; ECF No. 63 at 11; ECF
7 No. 69.) Accordingly, the court will permit plaintiff an opportunity to address the complaint's
8 current deficiencies in a manner that complies with Rule 8, clarifies the claims plaintiff attempts
9 to assert, notes which claims plaintiff asserts against which defendants, and alleges with
10 particularity the overt acts defendants engaged in that support plaintiff's claims.¹ The amended
11 pleading shall be titled "First Amended Complaint."

12 Plaintiff is informed that the court cannot refer to prior pleadings in order to make an
13 amended complaint complete. Eastern District Local Rule 220 requires that an amended
14 complaint be complete in itself. This is because, as a general rule, an amended complaint
15 supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967) ("The
16 amended complaint supersedes the original, the latter being treated thereafter as non-existent.").
17 Accordingly, once plaintiffs file an amended complaint, the original complaint no longer serves
18 any function in the case. Defendants not named in an amended complaint are no longer
19 defendants. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

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22 ¹ Plaintiff is further reminded of the court's August 24, 2012 order which provided: "[P]laintiff
23 must allege claims for damages only under 42 U.S.C. § 1983 for violation of constitutional rights
24 under the Fourteenth Amendment attributable to conduct occurring *within the statute of*
25 *limitations*. Plaintiff is again informed that he may not maintain a damages action against the
26 Regents or the individual defendants in their official capacities. Arizonans for Official English v.
27 Arizona, 520 U.S. 43, 69 n.24 (1997); Will v. Michigan Dep't of State Police, 491 U.S. 58, 64
28 (1989) (a state is not a "person" under Section 1983); see Maldonado v. Harris, 370 F.3d 954, 951
(9th Cir. 2004) ("[s]tate agencies ... are not ... persons within the meaning of § 1983, and are
therefore not amenable to suit under that statute"); Cerrato v. San Francisco Community College
Dist., 26 F.3d 968, 973 n. 16 (9th Cir.1994); Armstrong v. Meyers, 964 F.2d 948, 949-50 (9th
Cir. 1992); Brooks v. Sulphur Springs Valley Elec. Co., 951 F.2d 1050, 1053 (9th Cir. 1991)."
(ECF No. 42 at 5 (emphasis added).)

1 Plaintiff is also hereby informed that he is obligated to comply with court orders and the
2 rules of litigation procedure, notwithstanding his status as a pro se litigant. Eastern District Local
3 Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules or with any
4 order of the Court may be grounds for imposition by the Court of any and all sanctions authorized
5 by statute or Rule or within the inherent power of the Court.” Moreover, Eastern District Local
6 Rule 183(a) provides, in part:

7 Any individual representing himself or herself without an attorney is bound by the
8 Federal Rules of Civil or Criminal Procedure, these Rules, and all other applicable
9 law. All obligations placed on “counsel” by these Rules apply to individuals
10 appearing in propria persona. Failure to comply therewith may be ground for
11 dismissal . . . or any other sanction appropriate under these Rules.

12 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
13 same rules of procedure that govern other litigants.”). Case law is in accord that a district court
14 may impose sanctions, including involuntary dismissal of a plaintiff’s case pursuant to Federal
15 Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or fails to
16 comply with the court’s orders. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991)
17 (recognizing that a court “may act *sua sponte* to dismiss a suit for failure to prosecute”); Hells
18 Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that
19 courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b) *sua sponte* for a
20 plaintiff’s failure to prosecute or comply with the rules of civil procedure or the court’s orders);
21 Ferdik, 963 F.2d at 1260 (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court
22 may dismiss an action for failure to comply with any order of the court.”), cert. denied, 506 U.S.
23 915 (1992); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per
24 curiam) (stating that district courts have inherent power to control their dockets and may impose
25 sanctions including dismissal), cert. denied, 479 U.S. 829 (1986). Accordingly, plaintiff’s failure
26 to file an amended pleading by the deadline stated herein may result in a recommendation that
27 this action be dismissed.

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