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

E CLAMPUS VITUS,)	
)	2:12-cv-01381-GEB-GGH
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
DAVID L. STEINER, THOMAS PEAK,)	
JOHN MOORE, KARL DODGE, JOSEPH)	
ZUMWALT CHAPTER 169 E CLAMPUS)	
VITUS, and DOES 1 through 50,)	
)	
Defendants.)	
_____)	

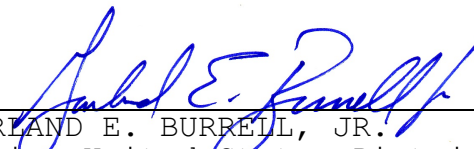
Defendants filed a motion to dismiss and strike Plaintiff's First Amended Complaint ("FAC"). (Defs.' Mot. to Dismiss & Strike FAC, ECF No. 20-1.) Defendants argue the FAC "must . . . be stricken as required by Rule 11" because no signature appears on the FAC (Id. 13:23.) Defendants argue that "Federal Rule of Civil Procedure [("Rule")] 11 . . . require[s] that pleadings be signed by the attorney who files them in order to certify that the contents of the complaint are truthful." (Id. 13:18-19.)

Rule 11 prescribes in pertinent part: "Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention." Fed. R. Civ. P. 11(a). Plaintiff's counsel did not sign the FAC. (See First Amended Complaint 16:5, ECF No. 18.)

1 Plaintiff and Plaintiff's counsel are notified that the FAC
2 will be stricken unless a signed FAC is filed on or before February 21,
3 2013. Plaintiff was previously warned in the Order filed December 18,
4 2013, that "[t]his action may be dismissed with prejudice under Federal
5 Rule of Civil Procedure 41(b) if Plaintiff fail[ed] to file an amended
6 complaint within the [time] prescribed" in that Order. Failing to file
7 a signed FAC is tantamount to not filing an FAC within the leave period
8 provided in the December 18, 2013 Order. Therefore, Plaintiff is warned
9 that this action could be dismissed with prejudice, if Plaintiff fails
10 to sign and file the FAC on or before February 21, 2013.

11 Further, since the unsigned FAC is not yet the operative
12 pleading, Defendants' motion to dismiss filed on January 22, 2013, is
13 deemed withdrawn since it challenges the unsigned FAC. Therefore, the
14 hearing on the motion currently scheduled for February 25, 2013, is
15 VACATED.

16 Dated: February 13, 2013

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20 GARLAND E. BURRELL, JR.
21 Senior United States District Judge
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