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 OF THE UNIVERSITY OF ILLINOIS, erroneously sued as
 THE UNIVERSITY OF ILLINOIS-URBANA CHAMPAIGN;
 and DR. GEORGE GOLLIN

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

ST. LUKE SCHOOL OF MEDICINE;
 DR. JERROLL B.R. DOLPHIN and
 DR. ROBERT FARMER on behalf of
 himself and all others similarly situated, as
 applicable,

Plaintiffs,

v.

REPUBLIC OF LIBERIA; MINISTRY OF
 HEALTH, a Liberian Governmental
 Agency; MINISTRY OF EDUCATION, a
 Liberian Governmental Agency; LIBERIAN
 MEDICAL BOARD, a Liberian
 Governmental Agency; NATIONAL
 COMMISSION ON HIGHER
 EDUCATION, a Liberian Governmental
 Agency; NATIONAL TRANSITIONAL
 LEGISLATIVE ASSEMBLY, a Liberian
 Governmental Agency; DR. ISAAC
 ROLAND; MOHAMMED SHERIFF; DR.
 BENSON BARH; DR. GEORGE GOLLIN;
 EDUCATION COMMISSION FOR
 FOREIGN MEDICAL GRADUATES; a
 Pennsylvania Non-Profit organization;
 FOUNDATION FOR ADVANCEMENT
 OF INTERNATIONAL EDUCATION
 AND RESEARCH; a Pennsylvania Non-
 Profit organization, UNIVERSITY OF
 ILLINOIS-URBANA CHAMPAIGN, an
 Illinois Institution of Higher Learning;
 STATE OF OREGON, Office of Degree
 Authorization,

Defendants.

Case No.: 10-CV-01791 RGK (SHx)

[Honorable R. Gary Klausner]

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 MOTION BY DEFENDANT
 DR. GEORGE GOLLIN:**

- (a) **TO DISMISS (ON
 GROUNDS OF
 SOVEREIGN IMMUNITY
 AND VIOLATION OF
 RULE 8)**
- (b) **ALTERNATIVELY FOR
 MORE DEFINITE
 STATEMENT; AND**
- (c) **TO STRIKE FOR FAILURE
 TO PLEAD CLASS**

**[FILED CONCURRENTLY WITH
 NOTICE OF MOTION;
 DECLARATION OF MICHAEL D.
 YOUNG; APPENDIX OF
 AUTHORITIES; AND [PROPOSED]
 ORDER]**

[FRCP 8, 12(b)(1), 12(e), 12(f) & 41(b)]

DATE: July 26, 2010
 TIME: 9:00 a.m.
 COURTROOM: 850

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs' prolix and rambling 71-page, 211-paragraph [First Amended] Class Action Complaint (hereinafter "complaint") attempts to state more than ten causes of action against a dozen different defendants, ranging from the government of Liberia and its current or former officials, to the University of Illinois and one of its professors, Dr. George Gollin. While we suspect each of the many defendants will have separate and multiple bases for challenging this unorthodox pleading, the instant motion is brought by just one defendant – Professor Gollin – and is both simple and narrowly focused. By this motion, Professor Gollin, respectfully seeks a dismissal of this action as to him based on the doctrine of *sovereign immunity*.

It is not only uncontroverted but constitutionally mandated that state instrumentalities, like the University, and their employees, like Professor Gollin, sued in their official capacity are immune from lawsuits in federal court under the Eleventh Amendment of the United States Constitution. *Regents of the University of California v. John Doe* (1996) 519 U.S. 425, 429; *Cannon v. University of Health Sciences/The Chicago Medical School* (7th Cir. 1983) 710 F.2d 351, 356-357. Thus, without meaning to oversimplify the matter, this straightforward and basic legal principle is dispositive of the instant motion. In light of the Constitutional sovereign immunity protection enjoyed by the University and Professor Gollin, who plaintiff asserts was acting in his official capacity as an employee of the University, this Court lacks jurisdiction to hear plaintiffs' claims against Professor Gollin, and accordingly he should be dismissed from this action.

Indeed, plaintiffs have seemingly conceded this point. Plaintiffs' counsel has already acknowledged in writing that he will voluntarily dismiss the University from this action (he has not yet done so as of the date of this filing). We asked that counsel similarly dismiss the University's employee on the same grounds, but did not receive the courtesy of a return phone call or email.

1 In any case, even if sovereign immunity were not implicated, the
 2 complaint would still be subject to dismissal for failing to comply with the most basic
 3 requirements of Rule 8 of the Federal Rules of Civil Procedure.¹ As this Court well
 4 knows, that Rule requires a complaint to set forth “a short and plain statement of the
 5 claim showing that the pleader is entitled to relief.” [FRCP 8(a)(2).] A 71-page, 211-
 6 paragraph, complaint – which was apparently written by a layman rather than legal
 7 counsel² and reading more like a bad novella than a legal pleading – is hardly the “short
 8 and plain statement” designed to demonstrate a right to relief that Rule 8 demands.
 9 Rather, in more than 200 paragraphs, plaintiffs describe *ad nauseam* a near epic battle
 10 with the Liberian government over, apparently, the accreditation of a medical school
 11 that teaches and graduates future doctors (if plaintiffs were to have their way) without
 12 the students ever having to attend a single class. No minutia escapes plaintiffs’
 13 attention, no matter how extraneous and trivial. Indeed, the complaint is replete with
 14 irrelevant details and long-winded narratives (most likely drafted by Plaintiff Dr.
 15 Dolphin himself) that describe Dr. Dolphin’s alleged interactions with various Liberian
 16 government officials in Liberia, sometimes on a *minute-by-minute basis*.

17 Making matters worse, despite its daunting length, the complaint fails to
 18 provide any of the defendants, let alone Professor Gollin and the University of Illinois
 19 (which had nothing to do with plaintiffs’ efforts to establish a medical school in
 20 Liberia) with even the most basic notice of the claims being asserted against them. In
 21 fact, it is virtually impossible to determine from the face of the complaint who is suing
 22 whom and for what. This glaring defect in plaintiffs’ pleading is insurmountable, and
 23 also justifies its dismissal under Rule 41(b).³ *McHenry v. Renne* (9th Cir. 1995) 84 F.3d

24
 25 ¹ All subsequent references to a “Rule” refer to the Federal Rules of Civil Procedure
 unless otherwise stated.

26 ² See complaint paragraph 112: “Then Mohammed Sheriff came to Dr. Dolphin and said
 27 *he was going to take my passport.*”

28 ³ Rule 41(b) states: “If the plaintiff fails to prosecute *or to comply with these rules* or a
 court order, a defendant may move to dismiss the action or any claim against it.” (Emphasis
 added.)

1 1172, 1180.

2 Lastly, plaintiffs' complaint purports to allege a class action on behalf of
3 all former students of the so-called St. Luke School of Medicine ("SLSOM"). The
4 complaint, however, fails to include any factual allegations whatsoever to establish the
5 class. Moreover, the complaint does not even attempt to comply with the additional
6 pleading requirements imposed by Local Rule 23-2. Plaintiffs' class allegations are,
7 therefore, hopelessly defective, and should be stricken from the complaint under Rule
8 12(f).

9 Each claim for relief also appears hopelessly defective. But if this case is
10 not dismissed as to Professor Gollin on sovereign immunity grounds, until we know
11 which claim is asserted against which defendant, and what the basis for the claims are,
12 we are not in a position at this time to raise those challenges. We reserve the right to
13 challenge individual causes of action should such become necessary (though we clearly
14 don't believe such should be necessary).

15 In sum, plaintiffs' complaint is woefully inadequate both in its failure to
16 establish subject matter jurisdiction and in its abject failure to comply with the Federal
17 Rules of Civil Procedure and the Central District's Local Rules. The complaint should,
18 therefore, be dismissed without further ado.

19 **II. FACTUAL BACKGROUND**

20 While the complaint is lengthy and filled with "facts," it is not at all clear
21 which of those facts are pertinent to any of the alleged causes of action. Nonetheless,
22 we will attempt here to summarize what appear to be the main themes of the pleading.
23 Of course, for purposes of this motion, we will assume these facts to be true.

24 According to the complaint, plaintiff Dr. Dolphin has tried for years to
25 establish SLSOM as an accredited medical school in the capital of Liberia on the
26 western coast of Africa. (FAC, ¶¶ 25-178.) He claims his efforts, however, have been
27 thwarted at every turn by widespread government corruption and civil unrest. (*Id.*) As
28 a result, the legal status of SLSOM has never been entirely clear. (*Id.*) Indeed, even

1 the Liberian government appears uncertain as to the status of SLSOM, having declared
2 at one point that the school does not exist at all, graduating medical doctor candidates
3 who never actually attended any classes. (FAC, ¶¶ 42, 43, 52, 58, 104, 125, 138, 165.)
4 In addition, there have been numerous media reports within Liberia that have labeled
5 the school as fraudulent and accused Dr. Dolphin of issuing phony diplomas. (FAC, ¶¶
6 60, 63, 94, 99, 143, 150.) Because the Liberian government has in the past refused to
7 recognize SLSOM as a legitimate medical school, the Educational Commission for
8 Foreign Medical Graduates, based in the United States, has permanently removed the
9 school from its International Medical Education Directory. (FAC, ¶¶ 104, 138, 139.)

10 According to the complaint, Dr. Gollin is a professor at the University of
11 Illinois who has become an academic expert in the area of fraudulent universities and
12 professional schools – so-called “diploma mills.” Plaintiffs assert that in this role at the
13 University, Professor Gollin from time-to-time posted his research in this area of
14 research on his university website (FAC, ¶¶ 22, 179(a)), and that the University has not
15 only taken “responsibility” for this research, but assisted Professor Gollin in placing his
16 research on appropriate websites. (FAC, ¶179, pg. 54.) The complaint asserts that
17 Professor Gollin, relying on the information provided by the Liberian government, the
18 numerous negative media reports, and other information that appeared to confirm the
19 fraudulent status of SLSOM, identified SLSOM as a diploma mill and included
20 information to that effect on his university website. (FAC, ¶ 179.) The complaint
21 further charges Professor Gollin with giving several presentations in which SLSOM
22 and Dr. Dolphin were mentioned and with submitting a “document” to the Ghana
23 National Accreditation Board wherein SLSOM and Dr. Dolphin were again discussed.
24 (FAC, ¶¶ 180, 181.)

25 Additionally, the complaint charges that the University continues to
26 publish and host its professor’s research (FAC, ¶179, pg. 55); supports the professor by
27 allowing him to use the University letterhead and insignia in his work (*id.*); and
28 provides the professor with computers and servers to carry out his diploma mill

1 research. (*Id.*)

2 Based on these facts, the complaint attempts to state nearly a dozen claims
3 against Professor Gollin, although it is not at all clear which facts pertain to which
4 claims, if any; and the complaint does little to illuminate this inquiry. In any event, as
5 noted above, and as explained next, the existence of a valid claim, if any, is really
6 immaterial since Professor Gollin, like his employer the University of Illinois, is
7 immune from suit in federal court under the Eleventh Amendment of the U.S.
8 Constitution. Accordingly, plaintiffs' complaint as it pertains to Professor Gollin
9 should be dismissed.

10 **III. LEGAL STANDARD**

11 Under Rule 12(b)(1), a defendant may properly move to dismiss a
12 complaint for lack of subject matter jurisdiction. *Ramirez v. Butler* (N.D. Cal. 2004)
13 319 F.Supp.2d 1304, 1036; FRCP 12(b)(1). The complaint should "be dismissed if,
14 looking at the complaint as a whole, it appears to lack federal jurisdiction either
15 'facially' or 'factually'." *Ramirez*, 319 F.Supp.2d 1036. Where, as is the case here, a
16 complaint is challenged on its face, all factual allegations must be taken as true and
17 construed in the light most favorable to the plaintiff. *Id.* at 1037. The Court, however,
18 need not accept as true merely conclusory allegations or unsupported deductions and
19 inferences. *Sprewell v. Golden State Warriors* (9th Cir. 2001) 266 F.3d 979, 988. *Even*
20 *on a motion to dismiss, the plaintiff, as the party seeking to invoke federal jurisdiction,*
21 *ultimately bears the burden of establishing "that the court has the requisite subject*
22 *matter jurisdiction to grant to the relief requested."* *Ramirez*, 319 F.Supp.2d 1036
23 (emphasis added).

24 **IV. PLAINTIFFS' CLAIMS AGAINST DR. GOLLIN, AS AN EMPLOYEE OF** 25 **THE UNIVERSITY, ARE BARRED BY THE ELEVENTH AMENDMENT**

26 It is axiomatic that states are immune from suit in federal court under the
27 Eleventh Amendment. *Regents of the University of California v. John Doe* (1996) 519
28 U.S. 425, 429. That amendment provides in pertinent part that the "judicial power of

1 the United States shall not be construed to extend to any suit in law or equity. . . against
 2 one of the United States by Citizens of another State, or by Citizens . . . of any Foreign
 3 State.” (U.S. Const. Amend. 11.) As interpreted by courts, the “reference to actions
 4 ‘against one of the United States’ encompasses not only actions in which a State is
 5 actually named as a defendant, but also certain actions *against state agents and state*
 6 *instrumentalities.*” *Regents of the University of California*, 519 U.S. 429 (emphasis
 7 added).

8 As discussed in detail in the motion brought by the University of Illinois,
 9 public universities have long been recognized by both the Supreme Court and the Ninth
 10 Circuit as “state instrumentalities” entitled to the protections of the Eleventh
 11 Amendment. *See, e.g., Id.* 430-431 (the University of California is immune from suit in
 12 federal court under the Eleventh Amendment); *Thompson v. City of Los Angeles* (9th
 13 Cir. 1989) 885 F.2d 1439, 1443 (same for UCLA); *Jackson v. Hayakawa* (9th Cir. 1982)
 14 682 F.2d 1344, 1350 (same for Cal State San Francisco); *Ronwin v. Shapiro* (9th Cir.
 15 1981) 657 F.2d 1071, 1073 (same for the University of Arizona). Other courts around
 16 the country have reached this same conclusion with respect to the public universities in
 17 their jurisdictions. *See, e.g., Kashani v. Purdue University* (7th Cir. 1987) 813 F.2d 843,
 18 845 (finding that Purdue University is entitled to immunity under the Eleventh
 19 Amendment); *Lewis v. Midwestern State University* (5th Cir. 1988) 837 F.2d 197,
 20 199 (same for Midwestern State University); *Perez v. Rodriguez Bou* (1st Cir. 1978) 575
 21 F.2d 21, 25 (same for the University of Puerto Rico); *Brennan v. University of Kansas*
 22 (10th Cir. 1971) 451 F.2d 1287, 1290-91 (same for the University of Kansas).

23 Indeed, the Seventh Circuit has already determined, not once, but on
 24 multiple occasions, that the University of Illinois is an instrumentality of the state,
 25 which is immune from suit in federal court. *See Cannon, supra*, 710 F.2d 356-357; *see*
 26 *also Goshtasby v. Board of Trustees of the University of Illinois* (7th Cir. 1997) 123 F.3d
 27 427; *Kroll v. Board of Trustees of the University of Illinois* (7th Cir. 1991) 934 F.2d 904,
 28 908; *McMiller v. Board of Trustees of the University of Illinois* (N.D. Ill 2003) 275

1 F.Supp.2d 974, 979; *Pollak v. Board of Trustees of the University of Illinois* (N.D. Ill.
2 2004) 2004 U.S. Dist. Lexis 12046, *4-6. Plaintiffs apparently concede this point, and
3 have not even bothered to oppose the University's motion to dismiss based upon
4 Eleventh Amendment immunity.

5 Of course, the Eleventh Amendment bars not only claims against the state
6 and state instrumentalities, like the University, but also claims against state employees,
7 like Professor Gollin. *Regents of the University of California*, 519 U.S. 429 (the 11th
8 Amendment bars claims "against state agents *and* state instrumentalities" (emphasis
9 added)); *Bair v. Krug* (9th Cir. 1988) 853 F.2d 672, 675 (same). Thus, to the extent
10 Professor Gollin is being sued in his official capacity as a professor of the University of
11 Illinois, he, like the University, is entitled to immunity under the Eleventh Amendment.
12 *Eaglesmith v. Ward* (9th Cir. 1995) 73 F.3d 857, 859; *Harvis v. Board of Trustees of the*
13 *University of Illinois* (N.D. Ill 1990) 744 F.Supp. 825, 829-831 (extending the 11th
14 Amendment to a professor of the University of Illinois); *Cannon, supra*, 710 F.2d 357
15 (extending the 11th Amendment to employees of the University of Illinois).

16 For instance, in *Harvis, supra*, 744 F.Supp. at 825, a claim was brought
17 against a University of Illinois professor for wrongful death arising out of a scuba
18 diving accident on a University vessel used as part of a course on marine life. The
19 Court held that the claim against the professor was barred by the Eleventh Amendment
20 since the professor was acting in his official capacity for the University. The Court
21 explained that "[a]n action against an employee of a state, based upon actions within
22 the scope of his duties as an employee of the state, is in reality an action against the
23 state. As discussed above, where any damages would come from the state treasury,
24 regardless of whether the defendant is a state or an officer, agent or employee of the
25 state, the action is in reality an action for the payment of State of Illinois funds and is
26 barred by the eleventh amendment and the principles of sovereign immunity." *Id.* at
27 829. (The court cites at n. 3 the Illinois statute that "provides that the Board of Trustees
28 has the authority to pay judgments against its employees.")

1 Similarly, in *Wozniak v. Conry* (Ill. App. Ct., 1997) 679 N.E.2d 1255, 288
 2 Ill.App.3d 129, a case with remarkable parallels to the instant case, a Department head,
 3 a professor at the University of Illinois was sued for “tortuous interference with an
 4 employment contract,” arising out of allegedly false representations made by the
 5 University of Illinois professor that the plaintiff alleged were made knowingly or with
 6 reckless disregard for their truth. The individual defendant filed a motion to dismiss on
 7 Eleventh Amendment grounds, claiming (as here) that the professor was an
 8 instrumentality of the public university, that the suit was against him in his official
 9 capacity, and hence he was entitled to the protections of sovereign immunity. The trial
 10 court granted the motion and this was affirmed on appeal.

11 On appeal, the court looked at whether the relief sought against the
 12 professor would “limit the ability of the employee to engage in lawful activity on behalf
 13 of the state.” *Id.* at 1258. In analyzing this, the court identified the relevant inquiry as
 14 being whether the individual defendant “would be acting within the scope of his duties
 15 by making truthful statements of the general type alleged.” *Id.* at 1258. In *Wozniak*,
 16 because the professor’s statements (assuming they were true) were clearly within the
 17 scope of his duties as head of the department at the University, the lawsuit against him
 18 was based on his official capacity, and the action was therefore barred by the Eleventh
 19 Amendment.

20 The same is true here. Professor Gollin is being sued, not as an individual,
 21 but in his official capacity as an employee of the University. For instance, plaintiffs’
 22 primary charge against Professor Gollin is that, as a professor of the University, he has
 23 published information on a university website that plaintiffs insist is fully controlled by
 24 the University. (FAC, ¶¶ 179,180.) Assuming the professor’s statements regarding the
 25 plaintiffs were true, Professor Gollin was doing what professors are hired to do –
 26 publish – as plaintiffs themselves have essentially conceded in their complaint.⁴ Not

27
 28 ⁴ See also the University of Illinois’ Mission and Vision statements that emphasize the
 importance of “teaching, scholarship and service,” which of course includes scholarly
 publication and public service. www.uillinois.edu/about/mission.cfm.

only do plaintiffs clearly and repeatedly identify Professor Gollin in the complaint as a professor at the University of Illinois (FAC, ¶¶ 22, 179), but they allege that the University has both taken “responsibility” for this research, and assisted Professor Gollin in placing his research on appropriate websites. (FAC, ¶179, pg. 54.)

Additionally, the complaint charges that the University continues to publish and host its professor’s research (FAC, ¶179, pg. 55); supports the professor by allowing him to use the University letterhead and insignia in his work (*id.*); and provides the professor with computers and servers to carry out his diploma mill research. (*Id.*, ¶180.)

Taken all together, these allegations point to only one, undeniable conclusion: plaintiffs’ seek to hold Professor Gollin liable in his official capacity as a professor of the University, and thus their claims against Professor Gollin are barred by the Eleventh Amendment. *Bair, supra*, 853 F.2d 675; *Harvis*, 744 F.Supp. 829-831. Accordingly, this action must be dismissed as to Professor Gollin under Rule 12(b)(1) for lack of subject matter jurisdiction.

V. PLAINTIFFS’ COMPLAINT FAILS TO SATISFY EVEN THE MOST BASIC PLEADING REQUIREMENTS

A. Plaintiffs’ Complaint Violates Rule 8, Requiring A Short And Plain Statement Of Plaintiffs’ Claims

Rule 8 mandates that all complaints contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” [FRCP 8(a)(2).] Moreover, each allegation of the complaint “must be simple, concise and direct.” [FRCP 8(d)(1).] The purpose of this rule is to ensure that defendants have fair notice of the claim levied against them. *McHenry v. Renne* (9th Cir. 1995) 84 F.3d 1172, 1176, 1177-1178; *Stewart v. California Dept. of Education* (S.D. Cal. 2008) 2008 U.S. Dist. Lexis 76228, *6. Where a pleading fails to achieve even this most rudimentary goal, it violates Rule 8 and should be dismissed. *McHenry*, 84 F.3d at 1180; *Schmidt v. Herrmann* (9th Cir. 1980) 614 F.2d 1221, 1224.

1 Regardless of Professor Gollin's immunity from suit in this action,
2 Plaintiffs' 70-page complaint is anything but "simple, concise and direct." Worse still,
3 despite its unbearable length, the complaint utterly fails to specify by whom or against
4 whom each count is being brought. As a result, one cannot tell from the face of the
5 complaint whether a particular claim is being asserted by any one or all of the three
6 named plaintiffs or, perhaps even, the putative class. Nor can one glean from the
7 complaint whether each claim is being asserted against all defendants or just one or
8 more of the thirteen named defendants. In short, it is virtually impossible to determine
9 from the face of the complaint who is suing whom and for what.

10 Plaintiffs apparently expect this Court, and the defendants, to comb
11 through more than 200 paragraphs to try to decipher which claims are being asserted
12 against which defendants, why, and by whom. Neither this Court, nor any defendant,
13 should be expected to "weed[] through the complaint to determine what allegations are
14 leveled at each defendant" *Stewart, supra*, 2008 U.S. Dist. Lexis 76228, *7;
15 *McHenry, supra*, 84 F.3d 1179-80. Indeed, this is precisely the type of onerous burden
16 that Rule 8 seeks to avoid, and is itself a basis for dismissing the complaint. *Stewart*,
17 2008 U.S. Dist. Lexis 76228, *7.

18 In *Stewart*, for example, the court found that the complaint violated Rule 8
19 where it was "nearly impossible to identify the allegations asserted against each
20 defendant." *Stewart*, 2008 U.S. Dist. Lexis 76228, *7. Similarly, in *McHenry*, the
21 Ninth Circuit upheld the dismissal of the complaint where, despite being more than 40
22 pages long, it failed to "specify which defendants were liable on which claims;"
23 instead, simply asserting that the "defendants conduct violated various rights of
24 plaintiffs, without saying which defendants." *McHenry*, 84 F.3d 1176. This, of course,
25 is exactly what plaintiffs have done here – nowhere in the complaint do plaintiffs
26 specify which claims are being brought against which defendants or by whom. Rather,
27 the complaint simply alleges again and again that "Defendants" have violated
28 "plaintiffs" rights in some respect or another, without specifying which defendants or

1 which plaintiffs. (*See, e.g.*, FAC, ¶¶ 200, 201, 202, 203, 206, 208, 208(A), 209, 210,
2 211.)

3 Indeed, the pleading in this case, like the complaint in *McHenry*, “reads
4 like a magazine article instead of a traditional complaint,” and is “mostly, narrative
5 ramblings and storytelling or political griping.” *McHenry, supra*, 84 F.3d 1176. In
6 fact, the complaint appears far more concerned with providing “quotations for
7 newspaper stories” than with giving defendants notice of the claims against them.
8 *McHenry*, 84 F.3d 1178. Such a pleading, which is “labeled a complaint but written
9 more as a press release, prolix in evidentiary detail,” yet lacking a simple and concise
10 statement that alerts the defendants to what they are being sued for and by whom, “fails
11 to perform the essential functions of a complaint,” and should be dismissed. *Id.* at
12 1180. Alternatively, the Court may issue an order requiring plaintiffs to prepare a more
13 definite statement under Rule 12(e). *Stewart*, 2008 U.S. Dist. Lexis 76228, *8. Either
14 way, the present pleading simply cannot be allowed to stand.

15 **B. Plaintiffs Have Failed To Properly Allege A Class Action**

16 Plaintiff’s complaint purports to allege a class action. The complaint,
17 however, simply restates, in the most conclusory fashion possible, the basic
18 requirements of Rule 23 with absolutely no supporting, factual allegations. (FAC, ¶ 8.)
19 In fact, all of plaintiffs’ class allegations are contained in a single paragraph. (*Id.*)
20 Such barebones allegations do not, by any stretch of the imagination, satisfy the basic
21 pleading requirements for stating a class action.

22 Furthermore, plaintiffs’ complaint fails to conform to Local Rule 23-2,
23 which requires that the complaint contain a separate section entitled “Class Action
24 Allegations.” This section must incorporate the “allegations thought to justify the
25 action’s proceeding as a class action” as well as a description of the required or
26 contemplated “notice to the proposed class.” [L.R. 23-2.] These elements are clearly
27 missing from the First Amended Complaint (FAC, ¶ 8), which is, therefore, defective
28 on its face. Accordingly, plaintiffs’ class allegations should be stricken under Rule

1 12(f). *See Stearns v. Select Comfort Retail Corp.* (N.D. Cal. 2009) 2009 U.S. Dist.
2 Lexis 112971, *45.

3 **VI. CONCLUSION**

4 As demonstrated above, Professor Gollin, like the University of Illinois, is
5 not subject to this Court's jurisdiction under the express mandate of the Eleventh
6 Amendment. Accordingly, he should be immediately dismissed from this action, *with*
7 *prejudice*, under Rule 12(b)(1). Alternatively, the Court should dismiss plaintiffs'
8 complaint for failing to comply with Rule 8 or, at a minimum, require plaintiffs to
9 provide a more definite statement under Rule 12(e). Lastly, the class allegations
10 contained in the complaint must be stricken as plaintiffs have failed to properly allege a
11 class action or comply with Local Rule 23-2.

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13 Respectfully Submitted

14 DATED: June 22, 2010

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16
17 /s/

18 _____
Nicole C. Rivas
Attorneys for Defendants THE BOARD OF
19 TRUSTEES OF THE UNIVERSITY OF ILLINOIS;
20 and DR. GEORGE GOLLIN
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