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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

Michael Lenoir Smith,)	No. CV 1-07-1547-SRB
Plaintiff,)	ORDER
vs.)	
Arnold Schwarzenegger, et al.,)	
Defendants.)	

Pending before the Court is Plaintiff's December 21, 2012 Motion and Request for Leave to Amend (Doc. 67) and lodged Fifth Amended Complaint. The Court will deny the Motion for Leave to Amend. The Court will also substitute Defendant Appeals Coordinator H. Martinez for Defendant Appeals Coordinator John Doe and will require Defendant Martinez to answer the Fourth Amended Complaint.

I. Background

On November 29, 2012, the Court issued a screening order determining that, liberally construed, Plaintiff's Fourth Amended Complaint states claims against Defendants Cate, Yates, Woodford, and Appeals Coordinator John Doe. The Court ordered service on Defendant Woodford and required Defendants Cate and Yates to answer the Fourth Amended Complaint. The Court did not order service on the John Doe Defendant.

In his Motion for Leave to Amend, Plaintiff states that he has discovered the name of

JDDL

1 the John Doe Defendant and requests that the Court accept his Fifth Amended Complaint
2 which names the John Doe Defendant.

3 The Court has reviewed Plaintiff's proposed Fifth Amended Complaint and finds that
4 it is significantly less detailed than Plaintiff's Fourth Amended Complaint and raises claims
5 against Defendants that have been previously screened out. Further, the Fifth Amended
6 Complaint raises a new claim with factual allegations that are not sufficient to state an Eighth
7 Amendment claim. Finally, the Court notes that Defendants Cate and Yates have already
8 answered the Fourth Amended Complaint and that Plaintiff has submitted the documents
9 necessary to serve the Fourth Amended Complaint on Defendant Woodford. The Court will
10 therefore deny Plaintiff's Motion for Leave to Amend.

11 However, in the interests of justice and moving this case forward, the Court will
12 substitute the named Defendant, Appeals Coordinator H. Martinez, for Defendant Appeals
13 Coordinator John Doe. The Court will also order service of the Fourth Amended Complaint
14 on Defendant Martinez and will require Defendant Martinez to answer the Fourth Amended
15 Complaint.

16 Plaintiff should note that absent extraordinary circumstances, the Court will not permit
17 any further amendment of Plaintiff's claims.

18 **II. Warnings**

19 **A. Address Changes**

20 Plaintiff must file and serve a notice of a change of address in accordance with Rule
21 83-182(f) and 83-183(b) of the Local Rules of Civil Procedure. Plaintiff must not include
22 a motion for other relief with a notice of change of address. Failure to comply may result in
23 dismissal of this action.

24 **B. Copies**

25 Plaintiff must submit an additional copy of every filing for use by the Court. See
26 LRCiv 5-133(d)(2). Failure to comply may result in the filing being stricken without further
27 notice to Plaintiff.

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1 **C. Possible Dismissal**

2 If Plaintiff fails to timely comply with every provision of this Order, including these
3 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,
4 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
5 comply with any order of the Court).

6 **IT IS ORDERED:**

7 (1) Plaintiff’s December 21, 2012 Motion and Request for Leave to Amend
8 (Doc. 67) is **denied**.

9 (2) Defendant Appeals Coordinator H. Martinez is substituted for Defendant
10 Appeals Coordinator John Doe; the Clerk of Court must add H. Martinez as a Defendant to
11 this action.

12 (3) Defendant Martinez **must answer** the Fourth Amended Complaint within the
13 time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil
14 Procedure.

15 (4) The Clerk of Court must send Plaintiff a service packet including the Fourth
16 Amended Complaint (Doc. 64), this Order, a Notice of Submission of Documents form, an
17 instruction sheet, and copies of summons and USM-285 forms for Defendant Martinez.

18 (5) Within **30 days** of the date of filing of this Order, Plaintiff must complete and
19 return to the Clerk of Court the Notice of Submission of Documents. Plaintiff must submit
20 with the Notice of Submission of Documents: a copy of the Fourth Amended Complaint for
21 Defendant Martinez, a copy of this Order for Defendant Martinez, a completed summons for
22 Defendant Martinez, and a completed USM-285 for Defendant Martinez.

23 (6) Plaintiff must not attempt service on Defendant and must not request waiver
24 of service. Once the Clerk of Court has received the Notice of Submission of Documents and
25 the required documents, the Court will direct the United States Marshal to seek waiver of
26 service from Defendant or serve Defendant.

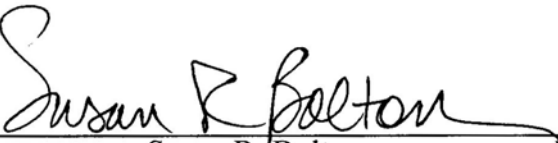
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(7) If Plaintiff fails to return the Notice of Submission of Documents and the required documents within 30 days of the date of filing of this Order, the Clerk of Court must, without further notice, enter a judgment of dismissal of this action without prejudice as to Defendant Martinez. See Fed. R. Civ. P. 41(b).

DATED this 4th day of January, 2013.



Susan R. Bolton
United States District Judge