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

Arthur L. Johnson,	)	CV-1-08-1183-DCB P
Plaintiff,	)	<b>ORDER</b>
vs.	)	
Dr. Ortiz, et al.,	)	
Defendants.	)	

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Now that the Ninth Circuit has dismissed the Plaintiff's Notice of Appeal as prematurely filed, this Court will treat the Plaintiff's Notice for Reconsideration (Doc. 44) filed July 26, 2010 as a response to the Order to Show Cause. Plaintiff does establish that a timely Notice of Claim was filed with the state such that the claims against Defendant Doebling based on acts after June 13, 2007 are not dismissed. Plaintiff did not establish that the Government Claims Act was timely complied with as to Defendants Diep and Vilaysane. The Court has previously ruled not to allow Plaintiff to file a Third (possibly the Fourth) Amended Complaint renaming Defendants and claims that clearly will result in a frivolous action subject to dismissal because Plaintiff failed to comply with the Government Claims Act based on the time period of the acts attributed to these Defendants and claims. *See Lucas v. Dept. of Corrections*, 66 F.3d 245, 248 (9<sup>th</sup> Cir. 1995)(no amendment can cure this defect).

Accordingly,

IT IS ORDERED that the Defendants' Motion to Dismiss (Doc. 28) the state law claims against Defendant Doebling for acts occurring after June 17, 2008 is DENIED. The

1 motion is GRANTED as to all other parties and claims which are dismissed from this action  
2 with prejudice based on Plaintiff's failure to comply with the Government Claims Act, BUT  
3 FOR Defendants Corona (deliberate indifference to medical needs) and Doehring (state law  
4 claims based on acts occurring after June 13, 2007), who should file their Answer on or  
5 before September 24, 2010.

6 DATED this 1<sup>st</sup> day of September, 2010.

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10 David C. Bury  
11 United States District Judge  
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