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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

J. DOE,

Plaintiff,

v.

J. YATES, et al.,

Defendants.

CASE NO. 1:08-CV-1219-LJO-DLB PC

ORDER TO SHOW CAUSE

(DOC. 117)

PLAINTIFF’S RESPONSE DUE WITHIN
TWENTY DAYS

_____ /

Plaintiff J. Doe¹ (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendants Yates and Scott.² On September 13, 2010, Plaintiff filed a motion under seal with the Court. Plaintiff stated, *inter alia*, that multiple prior filings with the Court were not signed by Plaintiff, but by a non-party who is not Plaintiff’s attorney. Plaintiff listed several possible requests, including dismissal of this action with prejudice to re-filing. The Court then ordered Defendants to respond to Plaintiff’s motion. Defendants indicated that they had no objection to dismissing this action without prejudice.

Now pending before the Court is Plaintiff’s notice, filed October 18, 2010. (Doc. 117.) Plaintiff indicates that Plaintiff does not want to dismiss this action, but rather seeks an extension

¹ J. Doe is a fictitious name.

² Other Defendants have yet to appear in this action.

1 of time to file a reply to Defendants' motion to dismiss.

2 A pro se party filing with this Court must sign each paper personally. Fed. R. Civ. P.
3 11(a). A party that presents a pleading, written motion, or other paper with this Court certifies,
4 *inter alia*, that the factual contentions have evidentiary support. *Id.* 11(b)(2).

5 Plaintiff through the September 13, 2010 motion has indicated that the previous pleadings
6 and other motions in this action, which includes the original pleading that initiated this action
7 and the second amended complaint (the controlling pleading), were not signed by Plaintiff.
8 Thus, there is no proper pleading in this action. Plaintiff has indicated that Plaintiff did not
9 intentionally file improper papers with this Court. The Court has no evidence to dispute this.
10 However, the issue of improper filings remains, which is fatal to this action. The Court has
11 presented Plaintiff with the opportunity to dismiss this action without prejudice to filing in a new
12 action. However, Plaintiff indicates that Plaintiff wants to continue in this action, despite the
13 substantial issues listed above. If Plaintiff does not wish to dismiss this action without prejudice,
14 the Court will recommend dismissal of this action **with prejudice** for violation of Rule 11. This
15 action cannot proceed on improper filings.

16 Accordingly, it is HEREBY ORDERED that Plaintiff is to show cause within **twenty**
17 **(20) days** why this action should not be dismissed with prejudice for violation of Rule 11.
18 Failure to timely respond or to show cause will result in a recommendation of dismissal of this
19 action with prejudice for violation of Rule 11. Plaintiff may request to voluntarily dismiss this
20 action without prejudice pursuant to Federal Rule of Civil Procedure 41(a), within **twenty (20)**
21 **days** from the date of service of this order.

22 IT IS SO ORDERED.

23 **Dated: October 22, 2010**

/s/ Dennis L. Beck
24 UNITED STATES MAGISTRATE JUDGE
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