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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION**

JACKIE ROBINSON,  
  
Plaintiff,  
  
vs.  
  
MIRIAM JOYA, et al.,  
  
Defendants.

Civil No. 08-1339 JLS (BLM)

**ORDER GRANTING IN PART  
AND DENYING IN PART  
PLAINTIFF’S MOTION FOR  
LEAVE TO FILE THIRD  
AMENDED COMPLAINT  
[Doc. No. 34];**

**GRANTING PLAINTIFF’S MOTION  
FOR JUDICIAL NOTICE AND  
STAYING CIVIL MATTER  
PENDING CONSOLIDATION  
DETERMINATION IN  
RELATED CIVIL CASE  
No. 1:06-CV-01801-BLW-LMB  
PURSUANT TO  
E.D. CAL. CIVLR 83-123(c)  
[Doc. Nos. 34, 37];**

**AND**

**DENYING DEFENDANTS’ MOTION  
FOR EXTENSION OF TIME  
AS MOOT [Doc. No. 41]**

In this civil action, filed pursuant to 42 U.S.C. § 1983, Jackie Robinson (“Plaintiff”), a Sexually Violent Predator (“SVP”) currently detained at Coalinga State Hospital (“CSH) in

1 Coalinga, California, has filed a Motion for Leave to File a Third Amended Complaint [Doc. No.  
2 34], as well as a Motion for Preliminary Injunction [Doc. No. 36].

3 On March 8, 2010, the Court granted both a Motion and Supplemental Motion to Dismiss  
4 Plaintiff's Second Amended Complaint brought on behalf of Defendants Joya, Zavala, Duvall,  
5 CSH and the California Department of Mental Health ("DMH") pursuant to FED.R.CIV.P.  
6 12(b)(6). See March 8, 2010 Order [Doc. No. 32]. Plaintiff was granted leave to amend "only  
7 as to [his] Equal Protection claim against Defendants CSH and DMH regarding the computer  
8 moratorium" he alleged was enacted at CSH in or about March 2007. *Id.* at 17-19, 21. All  
9 Plaintiff's other allegations, including First, Fourth and Fourteenth Amendment claims involving  
10 the CSH computer moratorium as well as claims of interference with mail, conspiracy, and  
11 violations of state law, were dismissed without further leave to amend. (*Id.* at 10-17, 21.)

12 Plaintiff now seeks leave to file, and has lodged, a proposed Third Amended Complaint  
13 ("TAC") [Doc. Nos. 33-35] which re-alleges his equal protection computer moratorium claims  
14 against CSH and DMH, but also includes individual Defendants who were previously dismissed:  
15 Joya, Zavala, Corona and Duvall. See TAC [Doc. No. 35] at 1, 3-4.

16 In addition, Plaintiff seeks to add a new defendant, Pam Ahlin, CSH's Executive Director,  
17 to the equal protection computer moratorium claims which were dismissed with leave to amend,  
18 and to allege new "due process," and "fair treatment" claim against Defendants CSH and DMH  
19 arising under the Fifth Amendment's Takings Clause. (*Id.* at 2, 7.)

20 Finally, Plaintiff seeks to add substantive due process and "punitive conditions of  
21 confinement" claims against two additional defendants, R.J. Donovan State Prison ("RJD") and  
22 T. Rabban Miller, an Associate Warden at RJD, arising at RJD in December 2009 while he was  
23 temporarily housed there for purposes of appearing at trial in another civil action. (TAC at 9-  
24 10.)

25 In addition, Plaintiff has filed another Motion for Preliminary Injunction [Doc. No. 36]  
26 which seeks to enjoin CSH and DMH from "enforcing the moratorium on computer purchases"  
27 at CSH pursuant to FED.R.CIV.P. 65, and a Motion for Judicial Notice [Doc No. 37], in which  
28 Plaintiff asks the Court to take notice of "Defendants' Notice of Related Cases & Defendants'

1 Status Report Regarding Mediation of Computer Claims” in Eastern District of California  
2 Consolidated Civil Case No. 1:06-CV-1801-BLW-LMB.” [Doc. No. 37].

3 On April 9, 2010, Defendants filed a Motion for Extension of Time to file Responsive  
4 Pleadings and a Request for a Briefing Schedule [Doc. No. 41].<sup>1</sup> And, on April 26, 2010,  
5 Defendants filed an Opposition to Plaintiff’s Motion for Leave to File his Third Amended  
6 Complaint [Doc. No. 43].

7 **Plaintiff’s Motion for Leave to Amend**

8 “Courts are free to grant a party leave to amend whenever ‘justice so requires,’  
9 FED.R.CIV.P. 15(a)(2), and requests for leave are generally granted with ‘extreme liberality.’”  
10 *Moss v. United States Secret Service*, 572 F.3d 962, 972 (9th Cir. 2009) (citing *Owens v. Kaiser*  
11 *Foundation Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001)). However, liberality in  
12 granting a plaintiff leave to amend “is subject to the qualification that the amendment not cause  
13 undue prejudice to the defendant, is not sought in bad faith, and is not futile.” *Thornton v.*  
14 *McClatchy Newspapers, Inc.*, 261 F.3d 789, 799 (9th Cir. 2001) (citation omitted).

15 Here, the Court finds that to the extent Plaintiff’s Third Amended Complaint re-names  
16 Defendants Joya, Zavala, Corona and Duvall as parties in this matter, his Motion for leave to  
17 amend is denied as futile for the reasons set forth at length in the Court’s March 8, 2010 Order.  
18 *Id.*

19 To the extent Plaintiff seeks leave to add Pam Ahlin, CSH’s Executive Director as a  
20 Defendant to the equal protection computer moratorium claims he was granted leave to amend  
21 and to allege a separate cause of action against CSH and DMH based on the Fifth Amendment’s  
22 Takings Clause, his Motion for leave to amend is also DENIED as futile. *Id.* Plaintiff’s Second  
23 Amended Complaint previously alleged Ahlin’s involvement in enforcing CSH’s computer  
24 moratorium even though Ahlin was not formally named as a Defendant at that time. *See* Second  
25 Amend. Compl. at 8-9. Plaintiff’s Third Amended Complaint seeks the same relief against  
26 Ahlin, for acts allegedly taken in her official and individual capacities. (Third Amend. Compl.

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<sup>1</sup> Defendants also lodged a proposed Order granting their Motion [Doc. No. 42]. The Court declines to issue that Order as unnecessary however, for the reasons set forth herein.

1 at 2.) However, Plaintiff's Third Amended Complaint alleges only that Ahlin, acting as  
2 Executive Director of CSH in October 2008, denied his inmate appeal regarding the computer  
3 moratorium because "[t]he Department of Mental Health ha[d] recently established a statewide  
4 workgroup to develop an appropriate policy for application in all DMH facilities concerning the  
5 use of personal computers." (TAC at 5.) Thus, to the extent Plaintiff seeks *injunctive relief*  
6 against Ahlin in her official capacity, leave to add her as a separate Defendant is denied as moot  
7 in that the prospective relief sought, should Plaintiff prove he is entitled to it, would be identical  
8 to that which he seeks against CSH and DMH. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991)  
9 (noting that official capacity suits filed against state officials are merely an alternative way of  
10 pleading an action against the entity of which the defendant is an officer); *Kentucky v. Graham*,  
11 473 U.S. 159, 165 (1985). Moreover any *damages* Plaintiff seeks against Ahlin for acts taken  
12 in her official capacity as Acting Director of CSH are precluded by the Eleventh Amendment,  
13 for the same reasons damages against the CSH and DMH are. *See* March 8, 2010 Order at 19  
14 n. 4 (citing *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 n.10 (1989); *Chaloux v.*  
15 *Killeen*, 886 F.2d 247, 252 (9th Cir. 1989)).

16 Plaintiff's Motion for Leave to Amend to add Ahlin as a Defendant is further denied as  
17 moot because as currently pleaded, his Third Amended Complaint fails to include the sufficient  
18 "non-conclusory 'factual content'" required to draw a reasonable inference that Ahlin is liable  
19 in her individual capacity for violating Plaintiff's right to equal protection. *See Moss v. United*  
20 *States Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Ashcroft v. Iqbal*, 556 U.S. \_\_\_,  
21 129 S.Ct. 1937, 1949 (2009)); *see also Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000)  
22 (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte  
23 dismiss an in forma pauperis complaint that fails to state a claim).

24 In addition, Plaintiff's Motion for Leave to Amend in order to add a Takings Clause claim  
25 against CSH and DMH based on the computer moratorium is also denied as futile insofar as his  
26 Third Amended Complaint fails to allege facts sufficient to support such a claim. *See Lopez*, 203  
27 F.3d at 1129-31 (court need not grant leave to amend if amendment would be futile); *accord*  
28 *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 339 (9th Cir. 1996). Specifically, Plaintiff

1 alleges he enjoys a “property interest in retaining [his] electronic devices” because he is a civil  
2 detainee whose rights are more expansive than his criminal counterparts, and that CSH and  
3 DMH’s computer moratorium denies him that interest. (TAC at 7). On the other hand, Plaintiff  
4 also claims he “would like to purchase [his] own computer,” but that he cannot due to the  
5 moratorium. (*Id.* at 5.) Thus, it is not clear from Plaintiff’s pleading whether he has had a  
6 personal computer confiscated, or simply wishes to purchase one but is prohibited from doing  
7 so as a result of the moratorium.

8         Either way, his allegations are insufficient to support a Takings Clause claim. The Fifth  
9 Amendment declares that “private property [shall not] be taken for public use, without just  
10 compensation.” U.S. CONST. AMEND. V; *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449  
11 U.S. 155, 160 (1980). That prohibition applies to the States through the Fourteenth Amendment.  
12 *Id.*; *see also Tellis v. Godinez*, 5 F.3d 1314, 1316 (9th Cir. 1993). In order to state a claim under  
13 the Takings Clause, however, a plaintiff must first demonstrate that he possesses a “property  
14 interest” that is constitutionally protected. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986,  
15 1000-01 (1984). “Only if he does indeed possess such an interest will a reviewing court proceed  
16 to determine whether the expropriation of that interest constitutes a ‘taking’ within the meaning  
17 of the Fifth Amendment.” *Schneider v. California Dept. of Corrections*, 151 F.3d 1194, 1198  
18 (9th Cir. 1998).

19         No court has found that *prisoners* have a constitutional right to possess personal  
20 computers, or items that are similar to personal computers, in their cells. *See Endsley v. Luna*,  
21 2008 WL 3890382 at \*3 (C.D. Cal. May 23, 2008) (unpub.) (citing *Sands v. Lewis*, 886 F.2d  
22 1166, 1172 (9th Cir.1989) (prisoners do not have a constitutional right to have memory  
23 typewriters in cells), *overruled on other grounds by Lewis v. Casey*, 518 U.S. 343, 350-55  
24 (1996); *Taylor v. Coughlin*, 29 F.3d 39, 40 (2nd Cir. 1994) (“If prison inmates do not enjoy a  
25 constitutional right to typewriters as implements of access to the courts, it would be illogical for  
26 us to rule that there is a constitutional right to typewriters of a specific memory capacity.”); *State*  
27 *ex rel. Anstey v. Davis*, 203 W.Va. 538, 545, 509 S.E.2d 579 (1998) (“We are persuaded by the  
28 uniformity of opinion on this issue and therefore hold that prison inmates have no constitutional

1 right to possess personal computers in their cells.”)). More recent cases involving civil  
2 committees, pretrial detainees and SVPs have concluded the same—despite application of the  
3 heightened 14th Amendment protection required for those not currently serving criminal  
4 sentences. *See Endsley v. Luna*, 2009 WL 3806266 (C.D. Cal. Nov. 12, 2009) (unpub.) at \*16  
5 (citing *Fogle v. Blake*, 227 Fed. Appx. 542, 542 (8th Cir. 2007) (finding civil committee failed  
6 to state a constitutional claim regarding denial of a computer or typewriter); *Spicer v. Richards*,  
7 2008 WL 3540182 at \*7 (W.D. Wash. Aug. 11, 2008) (unpub.) (finding no authority to show  
8 that SVP had a 14th Amendment right to possess a “cell phone, pager, computer, [or] color ink  
9 cartridge printer.”); *Carmony v. County of Sacramento*, 2008 WL 435343 at \*18 (E.D. Cal. Feb.  
10 14, 2008) (finding civil detainee had no “free-standing First Amendment right to access  
11 computers and/or the internet.”); *White v. Monahan*, 2009 WL 499121 at \*2 (C.D. Ill. Feb 24,  
12 2009) (acknowledging that while civil detainees enjoy more liberties than convicted prisoners,  
13 “[t]he inability to possess a computer does not implicate a property interest that might be  
14 protected by procedural due process protections or an interest that might be classified as a  
15 substantive due process interest.” ).

16 Thus, even assuming Plaintiff *had* a computer which was confiscated as a result of the  
17 moratorium, he has failed to demonstrate that he has a constitutionally protected interest in  
18 possessing one; therefore, neither a procedural due process or Takings Clause claim can be  
19 stated. *See Hewitt*, 794 F.2d at 1380. As such, Plaintiff’s Motion for leave to amend to include  
20 a Takings Clause claim against Defendants CSH and DMH is DENIED.

21 Finally, Plaintiff seeks leave to amend in order to add “Fourteenth Amendment  
22 substantive due process, punitive conditions of confinement” claims against two wholly new  
23 Defendants: T. Rabban Miller, an Associate Warden at RJD, and RJD itself. (TAC at 9-10.)  
24 Plaintiff alleges that on December 11, 2009, he was transported to RJD to attend a civil trial, and  
25 during his stay was placed in a cell in Ad-Seg, subject to “freezing cold” air, and denied a proper  
26 meal and medication. (TAC at 9.) Plaintiff further alleges he was exposed to a “cloud of  
27 gaseous pepper spray” when a disruptive inmate in a nearby cell was forcibly extracted. (*Id.* at  
28 10.)

1 In short, these claims are more properly categorized as supplemental pursuant to  
2 FED.R.CIV.P. 15(d). “On motion and reasonable notice, the court may, on just terms, permit a  
3 party to serve a supplemental pleading setting out any transaction, occurrence, or event that  
4 happened after the date of the pleading to be supplemented.” FED.R.CIV.P. 15(d). The Rule  
5 “plainly permits supplemental amendments to cover events happening after suit, and it follows,  
6 of course, that persons participating in these new events may be added if necessary.” *Griffin v.*  
7 *County School Board*, 377 U.S. 218, 226-27 (1964). However, permitting or denying leave to  
8 file a supplemental pleading or claim is left to the sound discretion of the court. *Keith v. Volpe*,  
9 858 F.2d 467, 475 (9th Cir. 1988).

10 Here, Plaintiff seeks leave to add these supplemental claims and Defendants in order to  
11 “promote judicial efficiency and economy, by not requiring [him to have to file another new  
12 complaint.” (Pl.’s Mem. of P&A’s in Supp. of Mot. for Leave to Amend [Doc. No. 34]).  
13 However, Plaintiff’s claims against RJD and its Associate Warden arose more than a year after  
14 this suit was commenced in a separate facility and are wholly unrelated to the equal protection  
15 moratorium claims against CSH and DMH he was previously granted leave to amend. *See Keith*,  
16 858 F.2d at 474 (noting that pursuant to FED.R.CIV.P. 15(d) “some relationship must exist  
17 between the newly alleged matters and the subject of the original action.”).<sup>2</sup>

18 For all these reasons, Plaintiff’s Motion for Leave to Amend is GRANTED only as to  
19 his claims for injunctive relief against Defendants CSH and DMH based on alleged violations  
20 of his right to equal protection in relation to the computer moratorium. Plaintiff’s Motion for  
21 Leave to Amend as to all other claims as alleged in his Third Amended Complaint against all  
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24 <sup>2</sup> Moreover, to the extent Plaintiff’s seeks leave to add a supplemental claim against RJD, his  
25 amendment is futile, for state prisons are not “persons” subject to suit under § 1983. *See Will*, 491 U.S.  
26 at 62, 70; *see also Hale v. State of Arizona*, 993 F.2d 1387, 1388 (9th Cir. 1993) (holding that the  
27 Arizona Department of Corrections is not a “person” within the meaning of 42 U.S.C. § 1983). As an  
28 “arm” of the state of California, RJD is shielded from liability under the Eleventh Amendment. *Will*,  
491 U.S. at 70; *see also Mitchell v. Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir.  
1988). “[I]n the absence of consent a suit in which the State or one of its agencies or department is  
named as the defendant is proscribed by the Eleventh Amendment. This jurisdictional bar applies  
regardless of the nature of the relief sought.” *Pennhurst v. Halderman*, 465 U.S. 89, 100 (1984)  
(citations omitted).

1 other previously named and newly added parties is DENIED as futile and those allegations are  
2 hereby DISMISSED without leave to amend. *See Thornton*, 261 F.3d at 799.

### 3 **Screening of Plaintiff’s Third Amended Complaint**

4 Having denied Plaintiff leave to amend as to all other claims, the Court now turns to the  
5 computer moratorium allegations Plaintiff *was* permitted to amend on March 8, 2010, in order  
6 to determine whether those claims as re-alleged in his Third Amended Complaint state an equal  
7 protection claim against Defendants CSH and DMH, or rather, whether they must be dismissed  
8 *sua sponte* pursuant to 28 U.S.C. § 1915(e)(2). *See Lopez*, 203 F.3d at 1126-27.

9 In its March 8, 2010 Order, the Court granted Defendant CSH and DMH’s Motion to  
10 Dismiss Plaintiff’s computer moratorium claims because while Plaintiff had alleged he was  
11 subject to disparate treatment (*i.e.*, he was one of 200 out of 900 SVP housed at CSH who were  
12 *not* permitted to possess or purchases personal computers as a result of the moratorium), his  
13 Second Amended Complaint nevertheless failed to allege that “Defendants acted with an intent  
14 or purpose to discriminate against him” either based on his membership in a protected class *or*  
15 “that no rational basis existed for such disparate treatment.” *See* March 8, 2010 Order at 18  
16 (citing *Flores v. Morgan Hill Unified Sch. Dist.*, 324 F.3d 1130, 1134 (9th Cir. 2003); *Thornton*  
17 *v. City of St. Helens*, 425 F.3d 1158, 1167 (9th Cir. 2005)).

18 In his Third Amended Complaint however, Plaintiff now alleges not only that he is a  
19 member of a protected class, but also that the computer moratorium is being selectively enforced  
20 against him and other SVPs who “do not participate in sex offender treatment” as a “pretext at  
21 punishing them.” (TAC at 6.) Plaintiff further alleges that “there is no rational basis for this  
22 disparate and punitive treatment.” (*Id.*) Thus, to the extent Plaintiff seeks injunctive relief  
23 related to the computer moratorium, the Court finds these allegations against CSH and DMH in  
24 Plaintiff’s Third Amended Complaint sufficient to state an equal protection claim under the  
25 Fourteenth Amendment. *See* 28 U.S.C. § 1915(e)(2); *Lopez*, 203 F.3d at 1126-27.

### 26 **Plaintiff’s Motion for Judicial Notice**

27 Finally, Plaintiff has also filed a Motion/Request for Judicial Notice [Doc. No. 37]. In  
28 this Motion, Plaintiff asks the Court to note that on March 17, 2001, counsel for Defendants



1 CSH and DMH in this matter filed both a Notice of Related Case as well as a Status Report  
2 Regarding Medication of Computer Claims in a consolidated civil action entitled *Allen v.*  
3 *Mayberg, et al.*, Eastern District of California Civil Case No. 1:06-CV-01801-BLW-LMB  
4 (hereafter “*Allen*”).

5 A court ““may take notice of proceedings in other courts, both within and without the  
6 federal judicial system, if those proceedings have a direct relation to matters at issue.”” *Bias v.*  
7 *Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d  
8 801, 803 n.2 (9th Cir. 2002)); *see also United States ex rel. Robinson Rancheria Citizens*  
9 *Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

10 On March 16, 2009, Chief Judge Winmill entered an Order in the *Allen* case consolidating  
11 eleven civil actions filed by persons, like Plaintiff, in custody of the California DMH and housed  
12 at CSH pursuant to California’ Sexually Violent Predator (“SVP”) Act, CAL. WELF. & INST.  
13 CODE § 6600, and challenging various conditions of their confinement. *See Allen* Order  
14 Consolidating Cases [Doc. No. 24]. In his Order, Judge Winmill further provided Defendants  
15 “with the opportunity to identify and move the Court to consolidate any substantially similar  
16 claims,” not already brought to the Court’s attention and consolidated. *Id.* at 6-7.

17 Pursuant to that Order, on March 17, 2010, counsel for Defendants in *this* case filed a  
18 Notice of Related Case pursuant to Local Rule 123<sup>3</sup> in the consolidated *Allen* matter which  
19 includes Plaintiff’s case as one of seven additional related matters, all involving claims for  
20 injunctive relief filed by SVPs related to the DMH and CSH’s moratorium on computer  
21 purchases, as one sufficiently related and appropriate for consolidation. *See Allen*, Defs.’ Notice

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23 <sup>3</sup> Eastern District of California Local Civil Rule 123(b) requires “counsel who has reason to  
24 believe that an action on file ... may be related to another action on file ... shall promptly file in each  
25 action and serve on the parties in each action a Notice of Related Cases.” Subsection (c) further  
26 provides:

27 Following the filing of a Notice of Related Cases, the Chief Judge or a Judge designated  
28 by the Chief Judge may, by special order, reassign either action to any Judge or  
Magistrate Judge sitting in the Eastern District of California as the situation may dictate.  
If the Judge to whom the action with the lower or lowest number has been assigned  
determines that assignment of the actions to a single Judge is likely to effect a savings  
of judicial effort or other economies, that Judge is authorized to enter an order  
reassigning all higher numbered related actions to himself or herself.

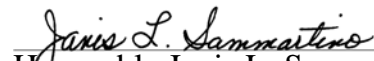
1 of Related Cases [Doc. No. 43].<sup>4</sup> According to PACER, Judge Winmill has yet to decide  
2 whether the cases identified in counsel's March 17, 2010 Notice of Related Cases, *including this*  
3 *one*, are subject to consolidation with *Allen*.

4 Thus, this Court finds it appropriate to STAY this civil matter, which now involves only  
5 injunctive relief claims against CSH and DMH related to the computer moratorium as alleged  
6 in Plaintiff's Third Amended Complaint, including Plaintiff separate renewed Motion for  
7 Preliminary Injunction [Doc. No. 36] related to that moratorium, until Chief Judge Winmill has  
8 an opportunity to review and enter an Order regarding counsel's Notice of Related case and  
9 request for consolidation with *Allen v. Mayberg, et al.*, Eastern District of California Civil Case  
10 NO. 1:06-CV-01801-BLW-LMB.

11 In light of this Order and Stay, Defendants' Motion for a Briefing Schedule and Extension  
12 of Time to File Responsive Pleadings [Doc. No. 41] is DENIED as moot. Counsel for  
13 Defendants are further DIRECTED to keep this Court apprised of Judge Winmill's decision  
14 regarding consolidation. Specifically, in the event Judge Winmill decides this case is *not* subject  
15 to consolidation with *Allen*, counsel for Defendants CSH and DMH shall, within 10 calendar  
16 days of that decision, file a Motion to Lift the Stay in this matter.<sup>5</sup>

17 **IT IS SO ORDERED.**

18 DATED: April 28, 2010

19   
20 Honorable Janis L. Sammartino  
United States District Judge

21 \_\_\_\_\_  
22 <sup>4</sup> On July 7, 2009 and September 15, 2009 respectively, counsel for Defendants also filed  
23 Notices of Related Case in *this* case [Doc. Nos. 20, 29]. In the first, counsel acknowledged that  
24 *Robinson* was arguably related to the *Allen* case, but did seek consolidation at that time. In the second,  
25 counsel again notified the Court that *Robinson* "may be related" to another series of cases subject to  
26 consolidation with *Allen* (the *Gonzalez* cases, Eastern District of California Civil Case No. 1:07-cv-  
00427-AWI-YNP), but again did not move for consolidation. However, on March 17, 2010, counsel  
27 for Defendants filed a Notice of Related Case in *Allen*, which *does* identify this case, *Robinson v. Joya,*  
28 *et al.*, E.D. Cal. Civil Case No. 1:08-cv-1339-JLS (BLM) as related and *does* seeks its consolidation.  
*See* Defs.' Notice of Related Cases [Local Rule 123] filed on March 17, 2010 in *Allen v. Mayberg, et*  
*al.*, E.D. Cal. Lead Consolidated Civil Case No. 1:06-cv-01801-BLW-LMB at 5 ¶ 7 [Doc. No. 43].

<sup>5</sup> In the event the Court lifts the stay, counsel for Defendants shall be prepared, within 15 days  
of the Court's Order Lifting the Stay, to file an Answer to Plaintiff's Third Amended Complaint, which  
the Court has already found sufficient to state an equal protection claim for injunctive relief against CSH  
and DMH, as well as any Opposition they may have to Plaintiff's Motion for Preliminary Injunction  
[Doc. No. 36].