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

**ZEARLEAN COOPER,** )  
 )  
 **Plaintiff,** )  
 )  
 **v.** )  
 )  
 **MATTHEW CATE, Secretary of the** )  
 **California Department of Corrections &** )  
 **Rehabilitation; THE CALIFORNIA** )  
 **DEPARTMENT OF CORRECTIONS &** )  
 **REHABILITATION; MARY** )  
 **LATTIMORE, Warden, Central** )  
 **California Women’s facility; MICHAEL** )  
 **TANN, Associate Warden Central** )  
 **California Women’s Facility; and** )  
 **CAPTAIN FRANK SANDERS, JR,** )  
 **Custody Captain Central California** )  
 **Women’s Facility,** )  
 )  
 **Defendants.** )  
 \_\_\_\_\_ )

**1:10-CV-00899 AWI DLB**  
**ORDER RE: MOTION TO DISMISS,**  
**MOTION FOR MORE DEFINITE**  
**STATEMENT, AND MOTION TO**  
**STRIKE**

20  
21 Defendants have filed a motion to dismiss pursuant to Fed. Rule Civ. Proc. 12(b)(1) and  
22 (6); a motion for a more definite statement pursuant to Fed. Rule Civ. Proc. 12(e); and a motion  
23 to strike pursuant to Fed. Rule Civ. Proc. 12(f). Doc. 11. Plaintiff filed a notice of non-  
24 opposition, acknowledging jurisdictional problems, and seeking leave to file an amended  
25 complaint. Doc. 14. The matter was taken under submission without benefit of oral argument.  
26 In key part, there are concerns about administrative exhaustion and sovereign immunity. The  
27 prosecution of this case would be aided by the resolution of these questions.

28 IT IS ORDERED, that Defendants’ motion to dismiss is GRANTED. Plaintiff’s claims

1 are DISMISSED without prejudice and Plaintiff is given leave to amend. Plaintiff must file an  
2 amended complaint within twenty-eight (28) days of the filing of this order.

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4 IT IS SO ORDERED.

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6 Dated: November 17, 2010



CHIEF UNITED STATES DISTRICT JUDGE

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