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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAMOR HILL,
Plaintiff,
v.
JAMES A. YATES, et al.,
Defendants.

Case No. 1:13-cv-01618-AWI-SKO (PC)
ORDER TO SHOW CAUSE
(Doc. 24)
TEN-DAY DEADLINE

On August 13, 2013, Plaintiff Damor Hill (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 alleging failure to provide medical care in violation of the Eighth Amendment. (ECF No. 1.) On May 9, 2014, the Court screened and dismissed Plaintiff’s complaint for failure to state a claim. 28 U.S.C. § 1915A. (ECF No. 14.) Plaintiff was ordered to file an amended complaint within thirty days. On July 1, 2014, the Court granted Plaintiff’s notice of substitution of Benjamin Pavone, Esquire, as counsel, and granted Plaintiff a ninety-day extension of time to file an amended complaint. (ECF Nos. 20-21.) On September 10, 2014, Plaintiff filed a notice of related case and motion to consolidate this action with Smith v. Schwarzenegger, No. 1:14-cv-00060-LJO-SAB. (ECF No. 24.)

Local Rule 123(a) provides that cases are related where “they involve the same parties and are based on the same or a similar claim;” the actions “involve the same property,

1 transaction, or event;” and involve “similar questions of fact and the same question of law. . . .”
2 Federal Rule of Civil Procedure 42 provides that “[i]f actions before the court involve a
3 common question of law or fact, the court may . . . consolidate the actions. . . .” Fed. R. Civ. P.
4 42 (a)(2). “The district court has broad discretion under this rule to consolidate cases pending
5 in the same district.” Investors Research Co. v. U.S. Dist. Court for Cent. Dist. of California,
6 877 F.2d 777, 777 (9th Cir. 1989).

7 Plaintiff moves to consolidate these actions without providing any basis supporting a
8 finding that the actions involve a common question of law or fact. Plaintiff’s initial complaint
9 alleged a failure to provide medical care. Smith is a multi-plaintiff action alleging that state
10 officials were deliberately indifferent to the substantial risk of harm by exposing the named
11 plaintiffs to the risk of contracting Valley Fever. The defendants are all alleged to have
12 participated in implementing or continuing the same policy of inaction despite their knowledge
13 of the risk.

14 While it is possible that Plaintiff may amend his complaint to allege claims similar to
15 those raised in Smith, the initial complaint did not name the same defendants, assert the same
16 claims, or contain the same factual allegations as Smith. Additionally, Plaintiff has not filed an
17 amended complaint. As a result, the Court cannot determine that common questions of law and
18 fact unquestionably exist in these actions. To the extent that the claims in this action are the
19 same as those alleged in Smith, it is unclear why Plaintiff should not dismiss this action and add
20 his claims to the consolidated complaint, without an order of consolidation.

21 Based on the foregoing, within **ten (10) days** of the date of service of this order, Plaintiff
22 is HEREBY ORDERED TO SHOW CAUSE why his motion to consolidate should not be
23 denied and why this action should not be dismissed so Plaintiff’s claims can be included in the
24 consolidated complaint in Smith.
25 IT IS SO ORDERED.

26 Dated: September 22, 2014

/s/ Sheila K. Oberto
27 UNITED STATES MAGISTRATE JUDGE
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