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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF CALIFORNIA
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8 DONALD WRIGHT,
9 Plaintiff,

10 vs.

11 EDMUND G. BROWN, JR., et al.,
12 Defendants.
13

1:13-cv-01822-AWI-GSA (PC)

ORDER VACATING FINDINGS AND
RECOMMENDATIONS OF
SEPTEMBER 4, 2014
(ECF No. 10.)

ORDER GRANTING PLAINTIFF'S
REQUEST FOR CONSOLIDATION
(ECF No. 13.)

ORDER FOR CLERK TO
CONSOLIDATE THIS CASE WITH
CASE 1:14-cv-00060-LJO-SAB

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16 **I. BACKGROUND**

17 On November 12, 2013, Plaintiff Donald Wright, a state prisoner, filed this civil rights
18 action pursuant to 42 U.S.C. § 1983 while proceeding in pro per, alleging failure to provide
19 medical care in violation of the Eighth Amendment. (ECF No. 1.)

20 On September 4, 2014, the court entered findings and recommendations to dismiss this
21 action based on Plaintiff's failure to comply with the court's orders of November 13, 2013 and
22 March 10, 2014, which ordered Plaintiff to submit the court's form indicating consent to or
23 decline of Magistrate Jurisdiction. (ECF No. 10.) On September 18, 2014, Plaintiff filed a
24 stipulation to substitute Attorney Benjamin Pavone as his attorney of record. (ECF No. 11.)
25 On September 18, 2014, Attorney Pavone filed a notice of related cases, objections to the
26 findings and recommendations, and a request for consolidation, on Plaintiff's behalf. (ECF
27 Nos. 12, 13.) On September 26, 2014, the court approved the stipulation for substitution of
28 attorneys. (ECF No. 14.)

1 **II. CONSOLIDATION**

2 Plaintiff contends that this case is related to Smith v. Schwarzenegger, No. 1:14-cv-
3 00060-LJO-SAB, because the defendant parties and claims, based on unlawful contraction of
4 the disease known as Valley Fever, are similar within the meaning of Local Rule 123(a).
5 Plaintiff requests consolidation of this case with Smith, arguing that assignment to the same
6 judges will maximize judicial economy and efficiency.

7 The purpose of consolidation is to avoid unnecessary cost or delay where the claims and
8 issues contain common aspects of law or fact. E.E.O.C. v. HBE Corp., 135 F.3d 543, 551 (8th
9 Cir. 1998). In determining whether to consolidate cases, “a court weighs the interest of judicial
10 convenience against the potential for delay, confusion and prejudice caused by consolidation.”
11 Southwest Marine, Inc. v. Triple A Mach. Shop, Inc., 720 F.Supp. 805, 807 (N.D. Cal. 1989).

12 Smith is proceeding on the claim that state officials were deliberately indifferent to the
13 substantial risk of harm by exposing the named plaintiffs to the risk of contracting Valley
14 Fever. The defendants are all alleged to have participated in implementing or continuing the
15 same policy of inaction despite their knowledge of the risk.

16 The discovery issues in these actions for those defendants named in both complaints
17 will be identical in each case. Consolidating these actions will avoid unnecessary costs
18 incurred due to identical discovery and motion practice occurring in separate actions.

19 Common questions of law and fact appear to exist in these actions.

20 It is in the interest of judicial economy to avoid duplication by consolidating these
21 actions for all pretrial purposes. Consolidation will conserve judicial resources and the
22 resources of the parties by addressing identical issues in a single case. Resolution of these
23 actions will involve overlapping facts and witnesses as to the claims raised. It serves judicial
24 economy to “avoid the inefficiency of separate trials involving related parties, witnesses, and
25 evidence.” E.E.O.C., 135 F.3d at 551.

26 At this point in the litigation, the plaintiffs in Smith have been granted the opportunity
27 to file a consolidated complaint. Plaintiff’s complaint in this action has not been served, and no
28 defendants have appeared in the action. Consolidation of these actions will not cause a delay,

1 but will actually expedite the litigation in this action by allowing Plaintiff to be included in the
2 consolidated complaint which can be addressed by one responsive pleading.

3 There is no risk of confusion due to the consolidation of these actions, as the claims will
4 be identical as to each named defendant. Similarly, the evidence and issues will be the same in
5 each case for each defendant. Finally, the Court can discern no prejudice to any of the parties
6 by consolidating these actions and consolidating these actions will avoid the danger of having
7 inconsistent verdicts in the related cases. The factors considered weigh in favor of
8 consolidating these actions for all purposes.

9 In light of this order, the court's findings and recommendations of September 4, 2014
10 shall be vacated.

11 **III. CONCLUSION**

12 Based on the foregoing, IT IS HEREBY ORDERED that:

- 13 1. The court's findings and recommendations of September 4, 2014 are
14 VACATED;
- 15 2. Plaintiff's request for consolidation, filed on September 18, 2014, is
16 GRANTED;
- 17 3. The Clerk's Office is directed to consolidate this action with Smith v.
18 Schwarzenegger, No. 1:14-cv-00060-LJO-SAB;
- 19 4. Smith v. Schwarzenegger, No. 1:14-cv-00060-LJO-SAB shall be designated as
20 the lead case; and
- 21 5. The Clerk's Office is directed to close this action.

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23 IT IS SO ORDERED.

24 Dated: September 30, 2014

25 /s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE
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