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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DALE D. SELVICK,

 Plaintiff,

 v.

PAUL D. BRAZELTON, et al.,

 Defendants.

Case No. 1:14-cv-00363-LJO-SAB

ORDER DISMISSING DEFENDANT J.
CLARK KELSO PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE
41(a)(1)(A)(i) (ECF No. 26)

ORDER SETTING MOTION TO DISMISS
HEARING ON SEPTEMBER 24, 2014

ORDER REQUIRING PLAINTIFF TO
SHOW CAUSE WHY THIS ACTION
SHOULD NOT BE CONSOLIDATED

Plaintiff Dale D. Selvick filed this action on March 11, 2014. On June 17, 2014, Defendants filed a notice of related case. On August 18, 2014, Plaintiff filed a notice of voluntary dismissal of Defendant J. Clark Kelso and Defendants Beard, Brown, Cate, and State of California filed a motion to dismiss.

On August 20, 2014, this action was related to Jackson, et al. v. State of California, et al., 1:13-cv-01055-LJO-SAB; Smith, et al. v. Schwarzenegger, et al., 1:14-cv-00060-LJO-SAB; Beagle, et al. v. Schwarzenegger, et al., 1:14-cv-00430-LJO-SAB; Abukar, et al. v. Schwarzenegger, et al., 1:14-cv-00816-LJO-SAB; and Adams, et al. v. Schwartzenegger, et al., 1:14-cv-01226-LJO-SAB and was assigned to the undersigned.

The Court has reviewed this action and finds that the complaint is substantially identical to

1 the complaints that were filed in Smith, Beagle, Akubar, and Adams, which this Court recently
2 consolidated. Smith, et al. v. Schwarzenegger, et al., 1:14-cv-00060-LJO-SAB at ECF No. 82.

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

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

13 The complaint in this action names the same defendants, asserts the same claims, and
14 contains the same factual allegations as those proceeding in the consolidated action. Common
15 questions of law and fact unquestionably exist in these actions and the Court finds that it would
16 be in the interest of judicial economy to consolidate this action with Smith should any claims
17 remain after the motion to dismiss is decided.

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

- 19 1. Defendant J. Clark Kelso is DISMISSED from this action pursuant to Federal
20 Rule of Civil Procedure 41(a)(1)(A)(i);
- 21 2. The motion to dismiss hearing set for September 19, 2014 in Courtroom 10 is
22 VACATED;
- 23 3. A hearing on Defendants’ motion to dismiss is set for Wednesday, September 24,
24 2014, at 10:00 a.m. in Courtroom 9; and

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4. Within fourteen days from the date of service of this order, Plaintiff shall show cause in writing why any claims remaining in this action following the motion to dismiss should not be consolidated with Smith, et al. v. Schwarzenegger, et al., 1:14-cv-00060-LJO-SAB.

IT IS SO ORDERED.

Dated: August 21, 2014


UNITED STATES MAGISTRATE JUDGE