

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

BRIAN APPLEGATE,
Plaintiff,
v.
KAMBREA SMITH, *et al.*,
Defendants.

1:15-cv-00972-EPG (PC)

**ORDER REQUIRING PLAINTIFF TO
NOTIFY THE COURT OF HIS INTENT
THIRTY-DAY DEADLINE**

Plaintiff Brian Applegate is a prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff's complaint is currently awaiting screening. The Court notes that on August 15, 2016, Plaintiff voluntarily dismissed a similar case, apparently because at least one of the issues Plaintiff complained of was resolved. (Voluntary Dismissal, *Applegate v. Clark, et al.*, Case No. 1:15-cv-00207-LJO-EPG (E.D. Cal. Aug. 15, 2016), ECF No. 21.) The Court also notes that Plaintiff is currently pursuing an action, *Applegate v. Robicheaux*, Case No. 1:15-cv-01016-LJO-EPG, in tandem with this case that appears to involve similar and overlapping claims. *Applegate v. Robicheaux* was initially filed less than two weeks after the complaint in the current case.

Because Plaintiff has dismissed his claims in *Applegate v. Clark* and is currently pursuing claims in *Applegate v. Robicheaux* that overlap with the claims in *Clark* and in the

1 current case, it is unclear to the Court what Plaintiff's intent with respect to these cases is.
2 Plaintiff may have intended to dismiss all of his related cases when he dismissed *Clark*.
3 Alternatively, he may believe that he has separate and distinguishable claims amongst *Clark*,
4 *Robicheaux*, and this case. Or it may even be that the current case was filed as a draft version
5 of *Robicheaux* and that the complaint in *Robicheaux* was intended to supplant the claims in the
6 current case.

7 Accordingly, IT IS ORDERED that within **30 days** from the date of this order, Plaintiff
8 shall either:

- 9 1. File a written report with this Court that states whether any of the issues in this
10 case have been resolved and identify which, if any, claims in this case Plaintiff
11 would like to continue to pursue. Plaintiff is advised that he may not pursue
12 identical claims in more than one case;
- 13 2. Alternatively, Plaintiff may file a First Amended Complaint to reflect any
14 changes in the scope of the claims or relief sought in this case. Should Plaintiff
15 choose to file an amended complaint, he should note that exhibits and
16 attachments are not required and he should confine his allegations to 25 pages or
17 less; or,
- 18 3. If Plaintiff no longer wishes to pursue the claims in this case, he should notify
19 the Court by filing a notice of voluntary dismissal.

20 Failure to comply with this order may result in this case being dismissed.

21 IT IS SO ORDERED.
22

23 Dated: October 11, 2016

24 /s/ *Eric P. Groj*
UNITED STATES MAGISTRATE JUDGE