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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 ANTONIO V. MONTANO,

12 Plaintiff,

13 v.

14 DARREL ADAMS, et al,

15 Defendants.

Case No. 1:15-cv-00452-LJO-SAB (PC)

ORDER GRANTING PLAINTIFF'S
REQUEST FOR THE COMPLAINT IN
ALANIZ v. SCHWARZENEGGER TO BE
CONSIDERED THE OPERATIVE
COMPLAINT AND DIRECTING CLERK
OF THE COURT TO CLOSE ACTION

(ECF No. 34)

17 ANDREW ALANIZ, et al.,

18 Plaintiffs,

19 v.

20 ARNOLD SCHWARZENEGGER, et al,

21 Defendants.

Case No. 1:15-cv-01063-LJO-SAB

ORDER VACATING AUGUST 24, 2016
HEARING AND GRANTING PLAINTIFF'S
REQUEST TO PROCEED IN ALANIZ

(ECF No. 26)

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23 On January 14, 2014, Plaintiff Antonio V. Montano, proceeding pro se, filed a civil rights
24 complaint pursuant to 42 U.S.C. § 1983 in the Central District of California. On March 24,
25 2015, the case was transferred to the Eastern District of California. Montano v. Adams, 1:15-cv-
26 00452-LJO-SAB (PC). On January 26, 2016, Plaintiff's complaint was screened and dismissed
27 with leave to file an amended complaint within thirty days. On February 12, 2016, counsel filed
28 a notice of appearance and a motion to relate and consolidate the action with Alaniz v.

1 Schwarzenegger, 1:15-cv-01063-LJO-SAB.

2 Alaniz v. Schwarzenegger, 1:15-cv-01063-LJO-SAB, was filed on July 9, 2015. On
3 February 18, 2016, the action was stayed pursuant to the stipulation of the parties pending the
4 resolution of appeals in several related actions, Smith v. Schwarzenegger, appeal no. 15-17155,
5 Hines v. Youssef, appeal no. 15-16145, and Jackson v. Brown, appeal no. 15-17076.

6 On February 25, 2016, an order issued relating and consolidating the Montano and Alaniz
7 actions and Montano was reassigned to the undersigned. On February 29, 2016, an order issued
8 requiring an amended complaint to be filed in Montano. After an order to show cause issued for
9 failure to comply with the February 29, 2016 order, a first amended complaint was filed in Montano
10 on May 24, 2016. On June 19, 2016, Plaintiff filed a notice of motion to lift the stay in Alaniz, and
11 for the complaint in Alaniz to be considered the operative complaint in both of these cases.

12 Plaintiff Montano brings this motion because he currently is a plaintiff in both Montano
13 and Alaniz. Plaintiff seeks to have the Alaniz complaint treated as the operative complaint but
14 due to potential statute of limitations issues wishes to preserve the filing date of the Montano
15 action for his claims. Defendants filed a statement of non-opposition on August 10, 2016.

16 While Plaintiff seeks to lift the stay in Alaniz, the Court sees no need to lift the stay. The
17 Court shall grant Plaintiff's request to have the Alaniz complaint considered the operative
18 complaint in this action. The statute of limitations issue is not before this Court so this order
19 does not address whether the claims in Alaniz relate back. However, due to the potential issue,
20 the date of filing and complaint in Montano shall be considered in determining whether Antonio
21 Montano's claims in Alaniz relate back to the filing of the complaint in Montano v. Adams,
22 1:15-cv-00452-LJO-SAB (PC).

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. The Court finds this matter suitable for decision without oral argument and the
25 hearing set for August 24, 2016 at 10:00 a.m. in Courtroom 9 is vacated. The
26 parties are not required to appear at that time;
- 27 2. All pending dates and matters in Montano v. Adams, 1:15-cv-00452-LJO-SAB
28 (PC) are VACATED;

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- 3. The Clerk of the Court is DIRECTED to close Montano v. Adams, 1:15-cv-00452-LJO-SAB (PC); and
- 4. The date of filing in Montano shall apply to Antonio Montano's claims in Alaniz for the purposes of determining any statute of limitations issues and whether the claims relate back to the filing of the complaint in Montano v. Adams, 1:15-cv-00452-LJO-SAB (PC).

IT IS SO ORDERED.

Dated: August 19, 2016


UNITED STATES MAGISTRATE JUDGE