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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN W. WILLIAMS,

Plaintiff,

No. 2:09-cv-0784 GGH P

vs.

DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, et al.

Defendants.

ORDER

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Plaintiff is a state prisoner who proceeds pro se in this action under 42 U.S.C. § 1983. Plaintiff has consented to this court’s jurisdiction. (ECF No. 4). Plaintiff has moved to have this case assigned to the Judge and Magistrate Judge who dismissed his prior action in 2009. For the reasons set forth below, the motion is denied.

Background

A brief review of the procedural history of this case is helpful. Plaintiff filed a complaint in March, 2009 which the undersigned screened in a June 22, 2009 order. See Doc. No. 5 at 3. The undersigned ordered that the complaint be dismissed with leave to amend for failure to comply with Federal Rules of Civil Procedure 18 and 20, because “plaintiff’s complaint includes many unrelated claims against more than a dozen defendants.” Id. at 4. Plaintiff elected

1 not to file an amended complaint, instead asking the court to enter final judgment so that plaintiff  
2 could file an appeal of the order in the Court of Appeals. See Doc. No. 16. The undersigned  
3 granted plaintiff's request, and final judgment was entered on December 9, 2009. See Doc. No.  
4 17. On January 31, 2012, the Court of Appeals reversed the undersigned's decision in part,  
5 finding that plaintiff had partially satisfied Federal Rule of Civil Procedure 20, and that  
6 misjoinder was, in any event, not an appropriate reason for dismissal. See Doc. No. 22. On  
7 February 8, 2012, the undersigned re-screened the complaint, and found that service was  
8 appropriate. See Doc. No. 23. After plaintiff submitted the requisite documents, the undersigned  
9 directed the U.S. Marshalls to serve the complaint on September 26, 2012. See Doc. No. 35.

10 On July 11, 2012, the undersigned denied plaintiff's "Motion to Disqualify  
11 Magistrate Judge in the Interest of Justice." See Doc. No. 33. After reviewing the case's  
12 procedural history, the undersigned found that plaintiff had failed to establish that the  
13 undersigned was biased against him. Id.

14 On October 18, 2012, plaintiff filed a "Motion and Request for Adherence to  
15 Local Rules," arguing that this case should be assigned to the judge and magistrate judge who  
16 dismissed his prior action, Williams v. Walker et al., 2:07-cv-0752, in April 2009. Plaintiff does  
17 not explain why he waited until October 2012, more than three and a half years, to seek  
18 reassignment. In support of his motion, plaintiff cites to the court's Local Rule 123(d), which  
19 reads:

20 (d) Refiling. An action may not be dismissed and thereafter refiled for the  
21 purpose of obtaining a different Judge or Magistrate Judge. If an action is  
22 dismissed and it, or one essentially the same, is refiled, it shall be assigned  
23 to the same Judge and Magistrate Judge. It is the duty of all counsel  
24 appearing therein to bring the facts of the refiled to the attention of the  
25 Clerk pursuant to this Rule. See L.R. 110.

24 Local Rule 110, cited within Local Rule 123, is entitled "Sanctions for  
25 Noncompliance with Rules," and reads:

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1 Failure to counsel or of a party to comply with these Rules or with any  
2 order of the Court may be grounds for imposition by the Court of any and  
3 all sanction authorized by state or Rule or within the inherent power of the  
4 Court.

5 A review of the plaintiff's prior action is also helpful. On April 10, 2009, the  
6 court granted defendants' motion to dismiss the action. See Williams v. Walker, 2:07-cv-0752  
7 WBS KJM, Doc. No. 29. Defendants had moved to dismiss the action alleging that plaintiff had  
8 failed to exhaust his administrative remedies. See id. The court found that plaintiff had not  
9 exhausted his administrative remedies, adopted the magistrate's findings and recommendations,  
10 granted defendants' motion, and dismissed the action without prejudice to re-filing. Id.

11 In the findings and recommendations, filed March 4, 2009, the magistrate judge  
12 presiding over the 2007 action noted that plaintiff had moved to file an amended complaint:

13 Plaintiff's motion is not, however, accompanied by a proposed amended  
14 complaint. As a litigant proceeding in forma pauperis, plaintiff's  
15 pleadings are subject to evaluation by this court pursuant to the in forma  
16 pauperis statute. See 28 U.S.C. § 1915. Because plaintiff did not submit a  
17 proposed amended complaint, the court is unable to evaluate it. Plaintiff's  
18 motion for leave to amend must therefore be denied.

19 See Case No. 2:07-cv-0752, Doc. No. 27 at 13.

20 On March 20, 2009, after the court had denied plaintiff's motion to amend, and  
21 while the findings and recommendations were still pending, plaintiff filed the operative  
22 complaint in his current action. See Doc. No. 1. It is not labeled "Amended," and nowhere in its  
23 207 pages can this court find any reference to plaintiff's then-pending action. Plaintiff  
24 additionally filed with the March 20, 2009 complaint a new application to proceed in forma  
25 pauperis. See Doc. No. 2.

26 The new complaint proceeded before the undersigned, who screened it as  
described above. Although plaintiff objected to the court's June 22, 2009 screening order, and  
also moved for reconsideration, it does not appear that plaintiff ever notified the court that this  
action was related to one he had previously filed.

