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

THOMAS CLINTON,

Plaintiff,

No. CIV S-09-1351 FCD EFB PS

vs.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff, proceeding in this action *pro se* and *in forma pauperis*, is suing for alleged civil rights violations. *See* 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On September 4, 2009, the court issued an order dismissing plaintiff’s complaint with leave to amend within 30 days. On November 4, 2009, plaintiff filed an amended complaint. Although substantially longer than the initial complaint, the amended complaint merely repeats the same claims and names the same defendants as the initial complaint. The amended complaint fails to cure the deficiencies identified by the court in its September 4, 2009 order.

On December 4, 2009, plaintiff filed a motion for reconsideration of dismissal. However, this court did not issue any order dismissing this action. It appears that plaintiff’s motion should have been filed in another action plaintiff is litigating, *Clinton v. Schwarzenegger*,

1 2:09-cv-1093 GEB GGH PS, but that plaintiff provided the wrong case number when filing the
2 motion.¹ The action designated as case number 2:09-cv-1093 GEB GGH PS, was dismissed on
3 November 30, 2009 and judgment was duly entered.

4 Accordingly, it is hereby ORDERED that the December 4, 2009 motion for
5 reconsideration be stricken from the docket and that the Clerk of the Court file the declaration in
6 the action designated as case number 2:09-cv-1093 GEB GGH PS.

7 Further, it is hereby RECOMMENDED that this action be dismissed for plaintiff's failure
8 to state a claim. *See* 28 U.S.C. § 1915A; *see also Lopez v. Smith*, 203 F.3d 1122, 1128 (9th Cir.
9 2000) (indigent prisoner proceeding without counsel must be given leave to file
10 amended complaint unless the court can rule out any possibility that the plaintiff could state a
11 claim).

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
17 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
18 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

19 Dated: February 22, 2010.

20 
21 EDMUND F. BRENNAN
22 UNITED STATES MAGISTRATE JUDGE
23
24
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26 ¹ A court may take judicial notice of court records. *See MGIC Indem. Co. v. Weisman*,
803 F.2d 500, 505 (9th Cir. 1986); *United States v. Wilson*, 631 F.2d 118, 119 (9th Cir. 1980).