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

ROBERT BENYAMINI,

Plaintiff,

No. CIV S-09-2323 FCD DAD P

vs.

T. FORSTHY, et al.,

Defendants.

ORDER

\_\_\_\_\_ /

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On July 18, 2011, the court issued an order vacating findings and recommendations recommending dismissal and granting plaintiff additional time to submit the USM-285 forms, summons, and copies of his amended complaint to effect service on defendants. Plaintiff was warned that further delays in this action on his part were unacceptable and that plaintiff's failure to comply with the court's order would result in a recommendation that this action be dismissed. Nonetheless, plaintiff has still not submitted the documents as ordered by the court in the July 18, 2011 order.

On August 1, 2011, petitioner instead filed a document styled, "Motion for Immediate Extention [sic] of time" in which he requests a "lengthy" extension of time in order to request leave to file a second amended complaint to include additional defendants. (Doc. No. 32

1 at 1.) Therein, plaintiff also requests a court order to compel the California Medical Facility “to  
2 release the names of there [sic] employees[.]” who may be defendants for his Eighth Amendment  
3 claim. (Id.) Lastly, plaintiff contends that he is having difficulty obtaining “legal copys” [sic].  
4 (Id.)

5 Before the court could respond to plaintiff’s requests, plaintiff filed several more  
6 motions. On August 17, 2011, plaintiff requested an extension of time to file his USM-285  
7 forms. (Doc. No. 35.) On August 18, 2011, plaintiff filed a motion to stay the proceedings while  
8 he proceeds with an appeal to the U.S. Court of Appeals for the Ninth Circuit. (Doc. No. 37.)  
9 Also on August 18, 2011, plaintiff filed a motion for leave to file a second amended complaint.  
10 (Doc. No. 38.)

11 The court will grant plaintiff one final extension of time to file his USM-285  
12 forms, the summons, and copies of his amended complaint. However, the court will not issue an  
13 order compelling the California Medical Facility to “release the names” of employees as  
14 requested by plaintiff. Plaintiff’s discovery request in this regard is vague and unsupported. In  
15 addition, the California Medical Facility is not a party to this action.

16 As for plaintiff’s motion for leave to file a second amended complaint, the motion  
17 is defective. Plaintiff is advised that if he wishes to further amend his complaint, he must file a  
18 motion explaining why he is now seeking further leave to amend when this action was  
19 commenced two years ago. Plaintiff must also attach to his motion a copy of any proposed  
20 second amended complaint.<sup>1</sup> See Rule 15(a)(2) of the Federal Rules of Civil Procedure. If such  
21 a motion is filed, the court will consider whether justice requires that further leave to amend be  
22 granted. Meanwhile, at this time the action is still proceeding on plaintiff’s amended complaint.

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23  
24 <sup>1</sup> Plaintiff is advised that any proposed second amended complaint must be complete in  
25 itself without reference to any prior complaints. Therefore, plaintiff must include in the proposed  
26 second amended complaint all of his claims and all of the named defendants, including sufficient  
allegations showing the involvement of each named defendant. See Loux v. Rhay, 375 F.2d 55,  
57 (9th Cir. 1967).

1 Moreover, plaintiff is again cautioned that he is required to comply with the court's orders and all  
2 applicable rules.

3 In moving for a stay, plaintiff explains that he has filed an appeal challenging this  
4 court's order denying his request for the appointment of counsel. An appeal from an  
5 interlocutory order does not, however "stay the proceedings, as it is firmly established that an  
6 appeal from an interlocutory order does not divest the trial court of jurisdiction to continue with  
7 other phases of the case." Plotkin v. Pacific Tel. and Tel. Co., 688 F.2d 1291, 1293 (9th  
8 Cir.1982). Therefore, plaintiff's motion for a stay will be denied.

9 In accordance with the above, IT IS HEREBY ORDERED that:

10 1. Plaintiff's August 1, 2011 and August 17, 2011 motions for extensions of time  
11 (Docs. No. 32 & 35) are granted in part;

12 2. Within twenty-one days from the service of this order, plaintiff shall complete  
13 the attached Notice of Submission of Documents and submit all of the following documents to  
14 the court at the same time:

- 15 a. The completed, signed Notice of Submission of Documents;
- 16 b. One completed summons;
- 17 c. One completed USM-285 form for each defendant; and
- 18 d. Eight copies of the endorsed amended complaint filed September 30,  
19 2010.

20 3. Plaintiff's August 18, 2011 motion for a stay (Doc. No. 37) is denied.

21 4. Plaintiff's August 18, 2011 motion for further leave to amend (Doc. No. 38) is  
22 denied as defective.

23 5. The Clerk of the Court is directed to send plaintiff seven USM-285 forms, one  
24 summons, and an instruction sheet.

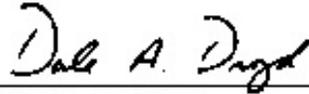
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6. Plaintiff failure to comply with this order will result in the dismissal of this action.

DATED: August 23, 2011.

  
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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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ROBERT BENYAMINI,

Plaintiff,

No. CIV S-09-2323 FCD DAD P

vs.

T. FORSTHY, et al.,

Defendants.

NOTICE OF SUBMISSION  
OF DOCUMENTS

\_\_\_\_\_ /

Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ one completed summons form;

\_\_\_\_\_ [#] completed USM-285 forms; and

\_\_\_\_\_ [#] true and exact copies of the amended complaint filed September 30,  
2010.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
Plaintiff