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

MICHAEL DAVID STORMAN,

Plaintiff,

No. CIV S-09-2565 JAM EFB PS

vs.

THE CALIFORNIA DEPARTMENT  
OF HEALTH SERVICES,  
DENTI-CAL DIRECTOR,

ORDER

Defendant.

\_\_\_\_\_ /  
This case, in which plaintiff is proceeding *in propria persona*, was referred to the undersigned under Local Rule 302(c)(21), pursuant to 28 U.S.C. § 636(b)(1). On November 10, 2009, the court dismissed plaintiff's complaint with leave to amend within thirty days. On December 8, 2009, plaintiff filed an interlocutory appeal from the order dismissing the complaint with leave to amend. As the November 10, 2009, order was not a final appealable order, the U.S. Court of Appeals dismissed the appeal on January 20, 2010 and the mandate spread on February 12, 2010. Therefore, on February 25, 2010, the undersigned granted plaintiff an additional opportunity to amend his complaint in conformance with the November 10, 2009 order. Dckt. No. 11. On March 2, 2010, plaintiff filed an amended complaint. Dckt. No. 12.

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1 On March 24, 2010, plaintiff filed a separate complaint and motion to proceed *in forma*  
2 *pauperis*. See Case No. Civ. S-10-0734 MCE EFB PS. Examination of that complaint and the  
3 amended complaint in this action reveals that the two cases involve similar (if not identical)  
4 parties, similar factual questions, and similar legal issues. Resolution of the two cases by  
5 different judges would “entail substantial duplication of labor,” and the court therefore finds the  
6 cases related under Local Rule 123(a). Under the regular practice of this court, related cases are  
7 generally assigned to the judge and magistrate judge to whom the first filed action was assigned.  
8 Accordingly, Case No. Civ. S-10-0734 MCE EFB PS will be reassigned.

9 Given that the amended complaint in this action and the complaint in Case No. Civ. S-10-  
10 0734 MCE EFB PS involve similar parties, factual questions, and legal issues, the Court also  
11 finds that they should be consolidated under Federal Rule of Civil Procedure 42(a). The two  
12 complaints will be construed as one amended complaint; the Clerk will be directed to  
13 administratively close the file in Case No. Civ. S-10-0734 MCE EFB PS; plaintiff’s motion  
14 therein to proceed *in forma pauperis* will be denied as moot; and the parties will be directed to  
15 file all future pleadings or other documents in this action.

16 Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss a case filed pursuant  
17 to the *in forma pauperis* statute if, at any time, it determines that the allegation of poverty is  
18 untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be  
19 granted, or seeks monetary relief against an immune defendant. The court cannot make this  
20 determination on the present record. Therefore, the court reserves decision on these issues until  
21 the record is sufficiently developed.

22 For the reasons stated above, IT IS HEREBY ORDERED that:

23 1. This action, Case No. Civ. S-09-2565 JAM EFB PS, is related to plaintiff’s complaint  
24 at Case No. Civ. S-10-0734 MCE EFB PS within the meaning of Local Rule 123(a). The cases  
25 shall also be consolidated pursuant to Fed. R. Civ. P. 42(a). Accordingly, Case No. Civ. S-10-  
26 0734 MCE EFB PS is hereby REASSIGNED to District Judge John A. Mendez and Magistrate

1 Judge Edmund F. Brennan. The Clerk is directed to make appropriate adjustment in the  
2 assignment of civil cases to compensate for the reassignment. In accordance with this order,

- 3 a. Case No. Civ. S-09-2565 JAM EFB PS is designated as the “master file”;
- 4 b. The motion to proceed *in forma pauperis* in Case No. Civ. S-10-0734  
5 MCE EFB PS is denied as moot;
- 6 c. The Clerk is directed to copy the complaint in Case No. Civ. S-10-0734  
7 MCE EFB PS and to place said copy in the “master file”;
- 8 d. The Clerk is directed to administratively close Case No. Civ. S-10-0734  
9 MCE EFB PS; and
- 10 e. The parties are directed to file all future pleadings and other documents  
11 ONLY in Case No. Civ. S-09-2565 JAM EFB PS.

12 2. The amended complaint in Case No. Civ. S-09-2565 JAM EFB PS, Dckt. No. 12, and  
13 the complaint in Case No. Civ. S-10-0734 MCE EFB PS, shall be construed together as one  
14 second amended complaint.

15 3. The Clerk of the Court is directed to issue forthwith all process pursuant to Federal  
16 Rule of Civil Procedure 4.

17 4. The Clerk of Court shall send plaintiff two USM-285 forms, one summons, a copy of  
18 the second amended complaint (including the amended complaint in Case No. Civ. S-09-2565  
19 JAM EFB PS, Dckt. No. 12, and the original complaint from Case No. Civ. S-10-0734 MCE  
20 EFB PS), this court’s scheduling order, and the forms providing notice of the magistrate judge’s  
21 availability to exercise jurisdiction for all purposes and the court’s voluntary dispute resolution  
22 program.

23 5. Plaintiff is advised that the U.S. Marshal will require:

- 24 a. One completed summons;
- 25 b. One completed USM-285 form for each defendant;
- 26 c. A copy of the second amended complaint (including the amended complaint in

1 Case No. Civ. S-09-2565 JAM EFB PS, Dckt. No. 12, and the original complaint from Case No.  
2 Civ. S-10-0734 MCE EFB PS) for each defendant, with an extra copy for the U.S. Marshal; and,

3 d. A copy of this court's scheduling order and related documents for each  
4 defendant.

5 6. Plaintiff shall supply the United States Marshal, within 14 days from the date this  
6 order is filed, all information needed by the Marshal to effect service of process, and *shall,*  
7 *within 14 days thereafter, file a statement with the court that said documents have been*  
8 *submitted to the United States Marshal.*

9 7. The U.S. Marshal shall serve process, with copies of this court's scheduling order and  
10 related documents, within 90 days of receipt of the required information from plaintiff, without  
11 prepayment of costs. *The United States Marshal shall, within 14 days thereafter, file a statement*  
12 *with the court that said documents have been served.* If the U.S. Marshal is unable, for any  
13 reason, to effect service of process on any defendant, the Marshal shall promptly report that fact,  
14 and the reasons for it, to the undersigned.

15 8. The Clerk of Court shall serve a copy of this order on the United States Marshal, 501  
16 "I" Street, Sacramento, CA 95814 (tel. 916-930-2030).

17 DATED: May 3, 2010.

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19 EDMUND F. BRENNAN  
20 UNITED STATES MAGISTRATE JUDGE  
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