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

JOHN CROSSWHITE,

Plaintiff,

No. CIV S-10-1809 MCE KJM PS

vs.

ARNOLD SCHWARZENEGGER,

Defendant.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 72-302(c)(21).

Plaintiff has submitted the affidavit required by § 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

In this action, plaintiff raises a claim arising out of his incarceration. The allegations in the complaint are virtually identical to the allegations in Crosswhite v. Schwarzenegger, CIV S-10-409 JAM KJM PS. This action is therefore duplicative of plaintiff's previously filed action, which is still pending. The court will therefore recommend this action be dismissed with prejudice.

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Accordingly, IT IS HEREBY ORDERED that plaintiffs' request to proceed in forma pauperis is granted; and

IT IS HEREBY RECOMMENDED that this action be dismissed with prejudice.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: July 22, 2010.


U.S. MAGISTRATE JUDGE

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