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

JOHN REYNOLDS,

No. CIV S-11-1381-MCE-CMK

Plaintiff,

vs.

ORDER

STATE OF CALIFORNIA, et al.,

Defendant.

\_\_\_\_\_ /

Plaintiff, who is proceeding pro se, brings this civil action challenging the constitutionality of various provisions of the California Fish and Game Code. Pending before the court are: (1) plaintiff's motion for leave to amend (Doc. 23); and (2) defendants' motion to dismiss (Docs. 16 and 21). A hearing was held before the undersigned in Redding, California, on August 31, 2011, at 10:00 a.m. Plaintiff appeared pro se. Bradley Solomon, Esq., appeared for defendants.

Turning first to plaintiff's motion for leave to amend, plaintiff seeks leave to file a second amended complaint which deletes the California Department of Fish and Game as a defendant but which is otherwise substantively the same as the operative first amended complaint. Plaintiff's motion is construed as a request for voluntary dismiss of defendant

1 California Department of Fish and Game and, so construed, will be granted. See Fed. R. Civ. P.  
2 41(a)(2). The action will proceed on the first amended complaint as against defendant State of  
3 California only.<sup>1</sup>

4 Turning to the motion to dismiss, the court is most concerned about two issues:  
5 whether the action is barred by the Eleventh Amendment, and whether the court must abstain  
6 under Younger v. Harris, 401 U.S. 37 (1971). Because it appears that these issues were not  
7 addressed by plaintiff in his opposition papers, and because these are potentially dispositive  
8 issues, the court will provide plaintiff an opportunity to file further briefing. Upon submission of  
9 further briefing, the case will stand submitted on the papers without further oral argument.

10 Accordingly, IT IS HEREBY ORDERED that:

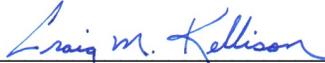
11 1. Plaintiff's motion for leave to file a second amended complaint (Doc. 23)  
12 is construed as a request for voluntary dismissal of defendant California Department of Fish and  
13 Game and, so construed, the request is granted;

14 2. The California Department of Fish and Game is voluntarily dismissed as a  
15 defendant to this action, which shall proceed as against defendant State of California only;

16 3. Plaintiff may file further briefing in opposition to the motion to dismiss  
17 within 14 days of the date of this order, after which time the motion will stand submitted; and

18 4. The Clerk of the Court is directed to update the docket to reflect Mr.  
19 Solomon's appearance on behalf of defendant State of California.

20  
21 DATED: September 1, 2011

22   
23 **CRAIG M. KELLISON**  
24 UNITED STATES MAGISTRATE JUDGE

25 <sup>1</sup> Defendants' counsel entered a general appearance on behalf of defendant State of  
26 California at the time of the hearing. The Clerk of the Court will be directed to update the docket  
to reflect Mr. Solomon's appearance on behalf of defendant State of California.