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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID WESLEY BIRRELL, et al.,  
Plaintiffs,  
v.  
ROBERT W. FOX, et al.,  
Defendants.

No. 2:16-cv-1818 DJC CKD P

ORDER

On August 30, 2017, the court screened plaintiffs’ amended complaint as the court is required to do under 28 U.S.C. § 1915A(a). The court found that plaintiffs could proceed on a claim for injunctive relief under the Eighth Amendment, for exposure to harmful substances including asbestos, against defendant Fox in his official capacity as the Warden of the California Medical Facility. Defendant Fox filed his answer on September 20, 2017.

At that point several matters contributed to extensive delay in this case, most notably the withdrawal of counsel for plaintiffs and the issuance of a lengthy stay to permit plaintiffs to retain substitute counsel. Plaintiffs never found substitute counsel and most of the plaintiffs have been dismissed for various reasons including indifference and a desire not to proceed further.

There are two plaintiffs that remain, however: plaintiff Deegan, who is still housed at the California Medical facility; and plaintiff Alford who now resides at the California Health Care Facility. Deegan was granted leave to file a second amended complaint and the second amended

1 complaint is before the court for screening. Alford proceeds on the first amended complaint.


2 For several reasons, including that plaintiffs are now proceeding on different pleadings,  
3 the court has determined that each plaintiff should proceed separately on his own claims. The  
4 Federal Rules of Civil Procedure provide “[p]arties may be dropped or added by order of the  
5 court on motion of any party or of its own initiative at any stage of the action and on such terms  
6 as are just. Any claim against a party may be severed and proceeded with separately.” Fed. R.  
7 Civ. P. 21. Courts have broad discretion regarding severance. See Davis v. Mason County, 927  
8 F.2d 1473, 1479 (9th Cir. 1991).

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. Plaintiff Alford’s claims are severed from plaintiff Deegan’s. The Clerk of the Court is  
11 directed to open a new action and file a copy of this order and plaintiff Deegan’s second amended  
12 complaint in that action.

13 2. The new action shall be assigned to the district court judge and magistrate judge  
14 assigned to this case.

15 Dated: June 13, 2023

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18 CAROLYN K. DELANEY  
19 UNITED STATES MAGISTRATE JUDGE

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