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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 RICHARD ROY SCOTT,

10 Plaintiff,

11 v.

12 VAN HOOK,

13 Defendant.

CASE NO. 3:16-CV-05785-RBL-DWC

ORDER

14 The District Court referred this 42 U.S.C. § 1983 action to United States Magistrate  
15 Judge David W. Christel. Currently before the Court are Plaintiff Richard Roy Scott's "FRCP 41  
16 Notice of Withdrawal of Contaminated Water Issue Only" ("Motion to Bifurcate") and Motion  
17 to Lift Stay. Dkt. 56, 57. After review of the pending Motions and relevant record, the Court  
18 grants Plaintiff's Motion to Bifurcate (Dkt. 56) and directs the Clerk of Court to add Richard  
19 Roy Scott as a Plaintiff in *Malone v. Strong*, 3:16-cv-5284-RBL-DWC. The Court also grants  
20 Plaintiff's Motion to Lift Stay (Dkt 57).

21 **I. Motion to Bifurcate (Dkt. 56)**

22 Plaintiff filed the Motion to Bifurcate on May 24, 2017, requesting to withdraw the  
23 contaminated water claim alleged in his Complaint because he joined a separate lawsuit. Dkt. 56.  
24 In this Court, there are approximately 200 plaintiffs currently alleging constitutional violations

1 arising from the potable water at the Special Commitment Center (“SCC”). *See Malone v.*  
2 *Strong*, 3:16-cv-5284-RBL-DWC (“Related Case”). Plaintiff contends he has joined the Related  
3 Case and is now being represented by Attorney Casey Arbenz.<sup>1</sup> Dkt. 56. Plaintiff has not yet  
4 been named in the Related Case and Mr. Arbenz has not yet entered an appearance on behalf of  
5 Plaintiff in the Related Case or in the current case. While Mr. Arbenz is not currently  
6 representing Plaintiff, he does not object to representing Plaintiff in the Related Case. Further,  
7 the Court finds joining Plaintiff in the Related Case promotes judicial efficiency and economy.  
8 Therefore, the Court grants Plaintiff’s Motion to Bifurcate (Dkt. 56). The Court anticipates Mr.  
9 Arbenz will enter an appearance on behalf of Plaintiff in the Related Case on or before July 21,  
10 2017.

11 The Court recognizes Plaintiff cannot use Federal Rule of Civil Procedure 41(a)(1) to  
12 “dismiss, unilaterally, a single claim from a multi-claim complaint.” *Ethridge v. Harbor House*  
13 *Restaurant*, 861 F.2d 1389, 1392 (9th Cir. 1988). Rather, a plaintiff’s voluntary dismissal of a  
14 single claim is subject to Rule 15 of the Federal Rules of Civil Procedure. *See Hells Canyon*  
15 *Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005). Here, while Plaintiff  
16 cannot amend as a matter of right, leave to amend ‘shall be freely given when justice so  
17 requires.’” *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 445 F.3d 1132, 1136 (9th Cir. 2006)  
18 (quoting Fed.R.Civ.P. 15(a)). Plaintiff is attempting to withdraw, not add, a claim and there is no  
19 evidence Defendants will be prejudiced if the Court allows Plaintiff to withdraw the  
20 contaminated water claim from this case. Therefore, the Court deems Plaintiff’s Complaint

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23 <sup>1</sup> This Court has determined exceptional circumstances exist which allow the Court to assist plaintiffs in all  
24 the potable water cases in securing counsel. Attorney Casey Arbenz was identified as an attorney willing to  
represent one or all IFP plaintiffs upon entering an agreement regarding the terms of representation. Mr. Arbenz has  
filed a notice of appearance in the Related Case.

1 amended. The claims alleging constitutional violations arising from the potable water at the SCC  
2 are withdrawn from the Complaint.

3 **II. Motion to Lift Stay (Dkt. 57)**

4 On May 9, 2017, the Court stayed Plaintiff's case while waiting for an answer and  
5 scheduling order to be filed in the Related Case. Dkt. 55. Plaintiff has now withdrawn the claim  
6 in his Complaint related to the claims alleged in the Related Case, *see* Section I, *supra*, and  
7 moves to lift the stay. Dkt. 57. As the Court has granted Plaintiff's Motion to Bifurcate, the  
8 Court agrees the stay is now unnecessary. Therefore, Plaintiff's Motion to Lift Stay (Dkt. 57) is  
9 granted.

10 **III. Conclusion**

11 After review of the Motions and relevant record, Plaintiff's Motion to Bifurcate (Dkt. 56)  
12 and Motion to Lift Stay (Dkt. 57) are granted. Any claims arising from the contaminated water at  
13 the SCC are withdrawn from the Complaint.<sup>2</sup> The Clerk of Court is directed to add Richard Roy  
14 Scott as a Plaintiff in *Malone v. Strong*, 3:16-cv-5284-RBL-DWC. The Clerk is also directed to  
15 send of a copy of this order to Mr. Arbenz. As stated above, the Court anticipates Mr. Arbenz  
16 will enter an appearance on behalf of Plaintiff in the Related Case on or before July 28, 2017.

17 Dated this 13th day of July, 2017.

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19 \_\_\_\_\_  
20 David W. Christel  
21 United States Magistrate Judge

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24 <sup>2</sup> As only one claim is being withdrawn from the Complaint, the Court finds it is unnecessary to require  
Plaintiff to file an amended complaint.