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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CLINTON VALES,

Plaintiff,

v.

KERN VALLEY STATE PRISON, et al., (ECF No. 12)

Defendants.

CASE NO. 1:09-cv-02164-MJS (PC)

ORDER DENYING PLAINTIFF'S MOTION TO DISMISS CLAIMS AGAINST DEFENDANT DR. CHEN

Plaintiff Clinton Vales ("Plaintiff") is a former state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Plaintiff initiated this action on December 14, 2009. (ECF No. 1.) The Complaint was dismissed on July 13, 2011 for failure to state a cognizable claim. (ECF No. 14.) Plaintiff was granted leave to amend. (Id.) Plaintiff has yet to file an amended complaint. Before the Court now is Plaintiff's Motion to Dismiss Charges Against Defendant Dr. Chen. (EFC No. 12.)

Federal courts are courts of limited jurisdiction; and as a preliminary matter, the court must have before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982); Jones v. City of Los Angeles, 444 F.3d 1118,

1 1126 (9th Cir. 2006). If the court does not have an actual case or controversy before it, it
2 has no power to hear the matter in question. Lyons, 461 U.S. at 102.

3 Plaintiff's Complaint was the operative pleading and it was dismissed for failure to
4 state any claims upon which relief could be granted. (ECF No. 14.) Plaintiff was given
5 leave to amend. (Id.) Since the operative pleading has been dismissed, the Court lacks
6 jurisdiction to decide the merits of Plaintiff's Motion. The Court will not have jurisdiction
7 until Plaintiff has filed a complaint that the Court has screened and found to state a
8 cognizable claim. Plaintiff is advised that if he wants to dismiss his claims against
9 Defendant Dr. Chen he should simply omit naming and referring to Dr. Chen in his
10 amended complaint.

11 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Dismiss Claims
12 Against Defendant Dr. Chen is DENIED.

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14 IT IS SO ORDERED.

15 Dated: August 21, 2011
16 di4d6

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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