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

STEVEN EDWARDS,
Plaintiff,

vs.

MAURICE JUNIOUS, et al.,
Defendants.

Case No. 1:10-cv-01456 OWW JLT (PC)
ORDER GRANTING MOTIONS TO AMEND
(Doc. 11, 13 & 18)
ORDER DENYING MOTION TO EXPEDITE
THE SCREENING OF THE COMPLAINT
(Doc. 14)
FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT PLAINTIFF'S
MOTIONS FOR A TEMPORARY
RESTRAINING ORDER BE DENIED
(Doc. 13 & 18)

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has several motions pending before the Court. The Court addresses each motion below.

I. MOTIONS TO AMEND

Plaintiff has filed three motions to amend. First, on September, 22, 2010, Plaintiff filed a motion to add new defendants and claims. (Doc. 11.) Second, on October 18, 2010, Plaintiff filed a motion to include in his original complaint a retaliation claim against Defendants for transferring him to the California Institution for Men. (Doc 13 at 1-2.) Plaintiff also seeks to add new claims

1 regarding his conditions of confinement at the California Institution for Men, including the fact that
2 he is housed in a cell with black mold and rodents, prison officials improperly processed his inmate
3 grievance regarding his acquired immune deficiency syndrome (“AIDS”), prison officials failed to
4 protect him, he has been unlawfully confined in a disciplinary cell unit, he receives inadequate
5 recreation time, he is not afforded adequate legal materials or law library access, and his appeals to
6 the warden regarding his classification status are ignored. (Id. at 2-4.) Third, on January 5, 2011,
7 Plaintiff filed a motion to include claims regarding the inadequate medical treatment he is currently
8 receiving at California State Prison, Los Angeles County. (Doc. 18 at 1-3.)

9 The Court has yet to authorize service of Plaintiff’s original complaint, as it has yet to be
10 screened. Thus, at this juncture, Plaintiff may amend his pleadings as a matter of right. See Fed. R.
11 Civ. P. 15(a). However, if Plaintiff elects to amended his complaint, he is advised of the following.
12 First, prisoners are required to exhaust all available administrative remedies *prior* to filing suit. See
13 42 U.S.C. § 1997e(a); Jones v. Bock, 549 U.S. 199, 211 (2007). Claims that are unexhausted are
14 subject to dismissal without prejudice. See Wyatt v. Terhune, 315 F.3d 1108, 1117-20 (9th Cir.
15 2003). Thus, Plaintiff should not amend his complaint to include new claims unless he has already
16 exhausted his administrative remedies with respect to those claims.

17 Second, “[u]nrelated claims against different defendants belong in different suits”
18 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). Thus, to the extent that Plaintiff’s “new” claims
19 are unrelated to the allegations in the original complaint, Plaintiff should not amend his pleadings
20 to include those claims. Instead, Plaintiff should file a new civil rights action and assert his claims
21 therein.¹ At first blush, it appears to the Court that most, if not all, of Plaintiff’s “new” claims fall
22 into this category.

23 Third, once Plaintiff files an amended complaint his original pleadings are superceded and
24 no longer serve a function in the case. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus,
25 the amended complaint must be “complete in itself without reference to the prior or superceded
26 pleading.” Local Rule 220. “All causes of action alleged in [the] original complaint which are not
27

28 ¹Likewise, as to events that occurred outside of the Eastern District of California, these claims must be brought in the corresponding judicial districts.

1 [re-]alleged in [the] amended complaint are waived.” King v. Atiyeh, 814 F.2d 565, 567 (9th Cir.
2 1987) (citations omitted).

3 **II. MOTION TO EXPEDITE SCREENING**

4 On November 1, 2010, Plaintiff filed a motion to expedite the screening of his complaint.
5 (Doc. 14.) Plaintiff is advised in this regard that the Eastern District of California has, by far, the
6 highest weighted caseload per judge in the entire country. The Court will screen and process his
7 complaint in due course.

8 **III. MOTIONS FOR PRELIMINARY INJUNCTIONS**

9 Also pending before the Court are two requests for preliminary injunctions. In his October
10 18, 2010 motion to amend, Plaintiff asks the Court to issue a temporary restraining order, to enjoin
11 the alleged problems at the California Institute for Men. (Doc. 13 at 4-5.) In his January 5, 2011
12 motion, Plaintiff requests the Court to issue a temporary restraining order to compel prison officials
13 at California State Prison, Los Angeles to provide Plaintiff with certain medications. (Doc. 18 at 1-
14 3.)

15 A temporary restraining order may be granted without written or oral notice to the adverse
16 party or that party’s attorney only if: (1) it clearly appears from specific facts shown by affidavit or
17 by the verified complaint that immediate and irreparable injury, loss or damage will result to the
18 applicant before the adverse party or the party's attorney can be heard in opposition, and (2) the
19 applicant certifies in writing the efforts, if any, which have been made to give notice and the reasons
20 supporting the claim that notice should not be required. See Fed. R. Civ. P. 65(b).

21 The standards for a TRO are essentially the same as that for a preliminary injunction. To be
22 entitled to preliminary injunctive relief, a party must demonstrate “that he is likely to succeed on the
23 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
24 balance of equities tips in his favor, and that an injunction is in the public interest.” Stormans, Inc.
25 v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing Winter v. Natural Res. Def. Council, Inc.,
26 555 U.S. 7, 129 S.Ct. 365, 374, 172 L. Ed. 2d 249 (2008)). The Court is required to weigh the
27 elements required to be shown under a “sliding scale” approach. Alliance for Wild Rockies v.
28 Cottrell, 622 F.3d 1045, 1052-53 (9th Cir. 2010). For example, a stronger showing of irreparable

1 harm may offset a lesser showing of likelihood of success on the merits. Id. However, in cases
2 brought by prisoners involving conditions of confinement, any preliminary injunction, “must be
3 narrowly drawn, extend no further than necessary to correct the harm the court finds requires
4 preliminary relief, and be the least intrusive means necessary to correct the harm.” 18 U.S.C. §
5 3626(a)(2).

6 Plaintiff fails to demonstrate any of the legal prerequisites for injunctive relief. First, Plaintiff
7 has not demonstrated, or even addressed, the likelihood of success on the merits of his underlying
8 case. Second, as to his first request (Doc. 13), Plaintiff is no longer housed at the California Institute
9 for Men and, therefore, restraining conduct by officials at that location can provide Plaintiff no
10 relief.² Third, his claims set forth in his complaint do not relate to events that occurred at the
11 facilities targeted in the motions but, instead, relate to events he alleges occurred while housed in
12 North Kern State Prison. (Doc. 1 at 3-9) Thus, because the relief sought bears no relation to the
13 merits of the underlying claims, there is no showing that the Defendants’ actions pose the risk of
14 Plaintiff suffering irreparable harm. Finally, Plaintiff fails to make any showing that the balance of
15 equities tips in his favor or that an injunction is in the public interest. Given these defects, it is patent
16 that Plaintiff has failed to demonstrate any entitlement to preliminary relief.

17 **IV. CONCLUSION**

18 For the reasons set forth above, it is **HEREBY ORDERED** that:

- 19 1. Plaintiff’s September 22, 2010, October 18, 2010, and January 5, 2011 motions to
20 amend (Docs. 11, 13 & 18) are **GRANTED**; if Plaintiff elects to file an amended
21 complaint, he shall do so within thirty days of the date of service of this order; and
- 22 2. Plaintiff’s November 1, 2010 motion to expedite (Doc. 14) is **DENIED**.

23 Also, it is **HEREBY RECOMMENDED** that:

- 24 1. Plaintiff’s October 18, 2010 motion for a temporary restraining order (Doc. 13) be
25 **DENIED**; and
- 26 2. Plaintiff’s January 5, 2011 motion for a temporary restraining order (Doc. 18) be

27
28 ²Moreover, given that he is no longer housed at this facility, there is no corresponding risk of irreparable
harm.

DENIED.

These findings and recommendations are submitted to the United States District Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B). Within 21 days after being served with these findings and recommendations, Plaintiff may file written objections with the Court. 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).

IT IS SO ORDERED.

Dated: February 25, 2011

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE