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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RODNEY BROOKS,

 Plaintiff,

 v.

HAROLD TATE, et al.,

 Defendants.

Case No. 1:11-cv-01503-AWI-DLB PC

**ORDER DENYING PLAINTIFF’S
MOTIONS** (ECF Nos. 9, 25)

**ORDER DIRECTING CLERK OF THE
COURT TO FILE PLAINTIFF’S
AMENDED COMPLAINT** (ECF No. 16)

Plaintiff Rodney Brooks (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation. Plaintiff is proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. This action is proceeding against Defendant Harold Tate for retaliation in violation of the First Amendment and deliberate indifference to a serious medical need in violation of the Eighth Amendment.

On October 14, 2011, Plaintiff filed a motion for preliminary injunction. ECF No. 9. On August 9, 2012, Plaintiff filed a second motion for preliminary injunction. ECF No. 15. Both motions concerned the same subject matter. On October 10, 2012, the Court ordered Plaintiff to notify the Court as to which motion he wished to proceed. ECF No. 24. On October 24, 2012, Plaintiff notified the Court that he wished to proceed with the August 9, 2012, motion. Accordingly, Plaintiff’s motion for preliminary injunction, filed October 14, 2011, is denied as withdrawn.

On October 9, 2012, Plaintiff filed a motion requesting that the Defendant answer Plaintiff’s timely filed amended complaint. ECF No. 25. Plaintiff’s motion will be denied without prejudice.

1 The Court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1),(2).
6 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
7 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
8 claim upon which relief may be granted.” *Id.* § 1915(e)(2)(B)(ii). Prior to requiring Defendant Tate
9 to respond to Plaintiff’s amended complaint, the Court will first screen it pursuant to § 1915A(a) and
10 § 1915(e)(2)(B).

11 Accordingly, it is HEREBY ORDERED that:

- 12 1. Plaintiff’s motion for preliminary injunction, filed October 14, 2011, is deemed moot as
13 withdrawn by Plaintiff;
- 14 2. Plaintiff’s motion for the Defendant to answer Plaintiff’s amended complaint, filed
15 October 9, 2012, is denied without prejudice; and
- 16 3. The Clerk of the Court is directed to file Plaintiff’s amended complaint, lodged on
17 August 9, 2012, at ECF No. 16.

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20 IT IS SO ORDERED.

21 Dated: November 26, 2012

/s/ Dennis L. Beck
22 UNITED STATES MAGISTRATE JUDGE
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