

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CLAY EDWARD LOPEZ,

CASE No. 1:12-cv-0076-MJS (PC)

Plaintiff,

ORDER DENYING PLAINTIFF'S MOTION  
TO SUPPLEMENT THE FIRST AMENDED  
COMPLAINT AND DENYING, WITHOUT  
PREJUDICE, INJUNCTIVE RELIEF

v.

(ECF Nos. 16)

S. SHIESHA, et al.,

Defendants.

\_\_\_\_\_ /

**I. PROCEDURAL HISTORY**

Plaintiff Clay Edward Lopez is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed on January 17, 2012 pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) Plaintiff has consented to Magistrate Judge jurisdiction. (Consent, ECF No. 5.)

1 On July 3, 2012, Plaintiff's Complaint was dismissed, with leave to amend, for  
2 failure to state a claim. (Order Dismiss. Compl., ECF No. 8.) Plaintiff filed a First  
3 Amended Complaint on November 16, 2012. (First Am. Compl., ECF No. 15.) The  
4 Court screened the First Amended Complaint and found a cognizable Eighth  
5 Amendment inadequate medical care claim against Defendant Ross and a cognizable  
6 First Amendment retaliation claim against Defendant Baker, but no other claims. On  
7 December 3, 2012, the Court ordered Plaintiff's claims against Defendants Langham,  
8 Thompson, Gonzalez, Stainer, and the Does, be dismissed with prejudice. Plaintiff also  
9 was ordered to either file an amended complaint curing identified deficiencies in his  
10 claim against Defendant Shiesha or notify the Court of his willingness to proceed only  
11 on his cognizable claims. (Order Dismiss. First Am. Compl., ECF No. 17.)  
12

13  
14 Pending before the Court is Plaintiff's November 26, 2012 motion seeking to  
15 supplement the First Amended Complaint with allegations and exhibits and for  
16 injunctive relief. (Mot. to Supp., ECF No. 16.)

17 **II. LEGAL STANDARD**

18 **A. Supplemental Pleading**

19 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend his  
20 pleading once as a matter of course at any time before a responsive pleading is served.  
21 Otherwise, a party may amend only by leave of the court, or by written consent of the  
22 adverse party, and leave shall be freely given when justice so requires. Fed. R. Civ. P.  
23 15(a).  
24

25 "Rule 15(a) is liberal and leave to amend shall be given when justice so  
26  
27

1 requires.” Amerisource Bergen Corp. v. Dialysis West, Inc., 465 F.3d 946, 951 (9th Cir.  
2 2006), quoting Fed. R. Civ. P. 15(a). Amended pleadings must be complete within  
3 themselves without reference to another pleading. Partial amendments are not  
4 permissible. Local Rule 220.

5 **B. Injunctive Relief**

6  
7 Injunctive relief, whether temporary or permanent, is an “extraordinary remedy,  
8 never awarded as of right.” Winter v. Natural Res. Defense Council, 555 U.S. 7, 22  
9 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to  
10 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
11 preliminary relief, that the balance of equities tips in his favor, and that an injunction is  
12 in the public interest.” Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046,  
13 1052 (9th Cir. 2009), quoting Winter, 555 U.S. at 20. An injunction may only be  
14 awarded upon a clear showing that the plaintiff is entitled to relief. Winter, 555 U.S. at  
15 22.  
16

17 Requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of  
18 the Prison Litigation Reform Act (“PLRA”), which requires that the Court find the “relief  
19 [sought] is narrowly drawn, extends no further than necessary to correct the violation of  
20 the federal right, and is the least intrusive means necessary to correct the violation of  
21 the federal right.”  
22

23 Injunctive relief should be used “sparingly, and only . . . in clear and plain  
24 case[s].” Rizzo v. Goode, 423 U.S. 362, 378 (1976).

25 **III. ANALYSIS**

26 Plaintiff’s motion to supplement the First Amended Complaint is not properly  
27

1 before the Court, and his request for injunctive relief does not meet legal prerequisites  
2 for such relief.

3 **A. Motion to Supplement**

4 Plaintiff's motion to supplement the First Amended Complaint is not properly  
5 before the Court.

6  
7 The Court screened the First Amended Complaint and, finding certain cognizable  
8 claims, offered Plaintiff the option of either filing an amended pleading or proceeding on  
9 his cognizable claims. He was not given the option to supplement any existing pleading  
10 and he has identified no legal or factual grounds that might justify amendment of the  
11 existing First Amended Complaint. His supplement does not address the deficiencies in  
12 his claims against Defendat Shiesha.

13  
14 In any event, the proposed amendment is unacceptable because it is not a  
15 pleading complete in and of itself, but instead refers to and is dependent upon a  
16 separate underlying pleading. Local Rule 220. Every pleading must contain "a short and  
17 plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R.  
18 Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of  
19 the elements of a cause of action, supported by mere conclusory statements, do not  
20 suffice." Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009), citing Bell  
21 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). A plaintiff must set forth "sufficient  
22 factual matter, accepted as true, to state a claim that is plausible on its face." Id. Facial  
23 plausibility demands more than the mere possibility that a defendant committed  
24 misconduct and, while factual allegations are accepted as true, legal conclusions are  
25 not. Id. at 1949–50.  
26  
27

1           Additionally, Plaintiff may not “supplement” as to events occurring prior to the  
2 date of the pleading to be supplemented. Fed. R. Civ. P 15(d).

3           Moreover, to the extent Plaintiff simply wishes to add exhibits to his existing First  
4 Amended Complaint, they need not, and rarely should be, made part of a complaint.  
5 They may not, in any event, be filed separately as Plaintiff proposes to do. “The court  
6 cannot serve as a repository for the parties' evidence (i.e., prison or medical records,  
7 witness affidavits, etc.). The parties may not file evidence with the court until the course  
8 of litigation brings the evidence into question (for example, on a motion for summary  
9 judgment, at trial, or when requested by the court).” (First Informational Order, ECF No.  
10 3 at 4:2-6.)

11  
12           **B.     Injunctive Relief**

13                   1.     No Showing of Likelihood of Success on the Merits

14           Plaintiff alleges that he will be released from custody on or about December 17,  
15 2012 (Mot. to Supp. at 10), that Prison medical staff have prescribed medications  
16 including morphine for treatment of his various serious medical needs (Id. at 5-6), and  
17 that a correctional officer told him prison medical staff have an alleged “system” and  
18 “underground rule of practice” of not giving prisoners controlled narcotics upon release  
19 from custody. (Mot. to Supp. at 2:1-17.) He seeks an injunction directing the “medical  
20 department to reconsider” such “system” and “practice”, so he can manage his pain  
21 levels upon his release. (Id. at 2:17-18.)

22           Plaintiff has failed at this early stage of the litigation to allege facts demonstrating  
23 a likelihood of success on the merits. Plaintiff has yet to plead a cognizable claim  
24 relating to a potential failure to provide a supply of prescription medication upon his  
25  
26  
27

1 release. (Order Dismiss. First Am. Compl at 9:10-11:16.) Though the obligation to  
2 provide constitutionally adequate medical care including required medication does not  
3 end at the prison gate, See *Wakefield v. Thompson*, 177 F.3d 1160, 1164 (9th Cir.  
4 1999), Plaintiff's claim to date "is purely speculative and does not state a claim to relief  
5 that is plausible on its face." (Order Dismiss. First Am. Compl. at 10:4-6.) Defendants  
6 have not yet appeared. Plaintiff's claim for medication upon release remains in dispute.  
7

8 Similarly, his instant motion fails to demonstrate a denial or delay in treatment of  
9 a serious medical need, or threat thereof. "[T]o maintain an Eighth Amendment claim  
10 based on prison medical treatment, an inmate must show 'deliberate indifference to  
11 serious medical needs.'" *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006), quoting  
12 *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). The two prong test for deliberate  
13 indifference requires the plaintiff to show (1) " 'a serious medical need' by demonstrating  
14 that 'failure to treat a prisoner's condition could result in further significant injury or the  
15 unnecessary and wanton infliction of pain,' " and (2) "the defendant's response to the  
16 need was deliberately indifferent." *Jett*, 439 F.3d at 1096, quoting *McGuckin v. Smith*,  
17 974 F.2d 1050, 1059 (9th Cir. 1992). Deliberate indifference is shown by "a purposeful  
18 act or failure to respond to a prisoner's pain or possible medical need, and harm caused  
19 by the indifference." *Jett*, 439 F.3d at 1096, citing *McGuckin*, 974 F.2d at 1060.  
20  
21

22 Plaintiff fails to explain what medications, validly prescribed beyond his release  
23 date, he requests and for what period of time, that he has asked such medications be  
24 prescribed for his use during the transition from prison to private care, that his request  
25 was denied or that any response was given and what it was. The instant motion is  
26 speculative and unsupported by any fact or cognizable claim in this matter.  
27

1 Plaintiff also fails to specify the individuals against whom he seeks injunctive  
2 relief. Generalized injunctive relief against “the medical department” is not permissible.

3 The PLRA states that:

4 [T]he court shall not grant or approve any prospective relief unless the court finds  
5 that such relief is narrowly drawn, extends no further than necessary to correct  
6 the violation of the Federal right, and is the least intrusive means necessary to  
7 correct the violation of the Federal right. The court shall give substantial weight to  
8 any adverse impact on public safety or the operation of a criminal justice system  
9 caused by the relief.

10  
11 18 U.S.C. § 3626(a)(1)(A). Similar requirements apply with respect to temporary  
12 restraining orders and preliminary injunctive relief. See 18 U.S.C. § 3626(a)(2).

13  
14 2. No Irreparable Harm

15 Plaintiff has failed to demonstrate irreparable harm. See City of Los Angeles v.  
16 Lyons, 461 U.S. 95, 101–102 (1983) (plaintiff must show “real and immediate” threat of  
17 injury, and “past exposure to illegal conduct does not in itself show a present case or  
18 controversy regarding injunctive relief . . . if unaccompanied by any continuing, present,  
19 adverse effects.”)

20  
21 Plaintiff alleges no facts suggesting a real and immediate threat of harm. He fails  
22 to sufficiently demonstrate any “system” or “practice” of denying narcotic medication  
23 upon release. Even if he had, nothing before the Court suggests a real and immediate  
24 threat of injury to Plaintiff. The instant motion does not demonstrate any medical  
25 indifference or suggest a risk arising therefrom, but rather is premised in conjecture and  
26

1 surmise. His underlying pleading likewise fails to sufficiently allege any such risk of  
2 harm.

3           3.     Balance of Equities and Public Interest Not in Plaintiff's Favor

4           The absence of a showing of likelihood of success on the merits, and of  
5 irreparable harm leaves nothing to tip the balance of equities in Plaintiff's favor, or  
6 suggest that an injunction would be in the public interest.  
7

8           In any event, absent the existence of exceptional circumstances not present here,  
9 the Court will not intervene in the day-to-day management of prisons. See e.g., Overton  
10 v. Bazzetta, 539 U.S. 126, 132 (2003) (prison officials entitled to substantial deference);  
11 Sandin v. Conner, 515 U.S. 472, 482-83 (1995) (disapproving the involvement of federal  
12 courts in the day-to-day-management of prisons.)  
13

14           Plaintiff's allegations do not support an entitlement to injunctive relief.

15 **IV.    CONCLUSION AND ORDER**

16           Plaintiff's motion to supplement the First Amended Complaint is not properly  
17 before the Court. His request for injunctive relief is unsupported by facts which would  
18 enable the Court to find that he is in need of and entitled to such relief.  
19

20           Accordingly, it is HEREBY ORDERED that Plaintiff's motion to supplement the  
21 First Amended Complaint (ECF No. 16) is DENIED, and injunctive relief requested  
22 therein is DENIED without prejudice.  
23

24 IT IS SO ORDERED.

25  
26 Dated: December 21, 2012

Is/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE