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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DALE OWEN DUSTIN,

Plaintiff,

v.

GIPSON, et al.,

Defendants.

Case No. 1:14-cv-00757 AWI DLB PC

FINDINGS AND RECOMMENDATIONS
DENYING PLAINTIFF’S REQUESTS FOR
INJUNCTIVE RELIEF
(Document 24-2)

THIRTY-DAY OBJECTION DEADLINE

Plaintiff Dale Owen Dustin (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. This action was transferred to this Court on May 16, 2014.

On June 9, 2014, the Court dismissed his complaint with leave to amend. Plaintiff has not yet filed an amended complaint, though the time for filing an amended complaint has not yet passed.

On June 11, 2014, Plaintiff filed numerous motions in which he requests injunctive relief. As best the Court can tell, Plaintiff requests (1) that the Court reduce his restitution from 50 percent to 20 percent; and (2) that the Court order prison official to provide him with a religious diet.

DISCUSSION

“A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24, 129 S.Ct. 365, 376 (2008) (citation omitted). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on

1 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
2 balance of equities tips in his favor, and that an injunction is in the public interest.” Id. at 20
3 (citations omitted). An injunction may only be awarded upon a clear showing that the plaintiff is
4 entitled to relief. Id. at 22 (citation omitted) (emphasis added).

5 Plaintiff’s complaint has been dismissed with leave to amend. Until Plaintiff files an
6 amended complaint and the Court is able to determine which claims are cognizable and
7 appropriately raised in this action, the Court lacks jurisdiction to issue any preliminary injunctions.
8 18 U.S.C. § 3626(a)(1)(A); Summers v. Earth Island Institute, 555 U.S. 488, 493, 129 S.Ct. 1142,
9 1149 (2009); Mayfield v. United States, 599 F.3d 964, 969 (9th Cir. 2010). Further, some of the
10 orders sought by Plaintiff cannot be issued even assuming Plaintiff is able to amend to state one or
11 more cognizable claims. For example, the Court cannot interfere with Plaintiff’s restitution related
12 to his state criminal conviction.

13 **RECOMMENDATION**

14 Accordingly, the Court RECOMMENDS that Plaintiff’s requests for injunctive relief be
15 DENIED.

16 These Findings and Recommendations will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty (30) days
18 after being served with these Findings and Recommendations, Plaintiff may file written objections
19 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
20 Recommendations.” Plaintiff is advised that failure to file objections within the specified time may
21 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153, 1157 (9th Cir.
22 1991).

23
24 IT IS SO ORDERED.

25 Dated: June 19, 2014

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