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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLARD SANTOS,

 Plaintiff,

 v.

ANDRE MATEVOUSIAN,

 Defendant.

No. 1:18-cv-0048 JLT P

**ORDER VACATING THE ORDER RE: IN
FORMA PAUPERIS STATUS AND
CLOSING THE CASE**

(Docs. 9, 10)

The plaintiff reports that the policy at issue in his litigation has changed. The Court has not yet screened the plaintiff’s complaint and it has not been served. Because the case is now moot, the Court directs the Clerk of the Court to close this action.

I. Screening Requirement

The in forma pauperis statute provides, “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

II. Pleading Standard

Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States.” Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of

1 substantive rights, but merely provides a method for vindicating federal rights conferred
2 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

3 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
4 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
5 violation was committed by a person acting under the color of state law. See West v. Atkins, 487
6 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

7 A complaint must contain “a short and plain statement of the claim showing that the
8 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
9 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
10 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
11 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
12 matter, accepted as true, to state a claim to relief that is plausible on its face.” Id. Facial
13 plausibility demands more than the mere possibility that a defendant committed misconduct and,
14 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

15 **III. Allegations**

16 At all times relevant to this action, plaintiff was a federal inmate housed at United States
17 Penitentiary in Atwater, California (“USP-Atwater”). He names USP-Atwater Warden Andrew
18 Matevousian as the sole defendant.

19 At issue is a policy promulgated by Warden Matevousian titled “Inmate Book Ordering
20 Procedures,” which became effective on October 11, 2017. This policy prohibits inmates from
21 accepting through the mail books from a publisher, bookstore, book club, or friends and family.
22 Instead, an inmate who wants to order a book must follow a specific procedure that includes
23 submitting an electronic request to staff identifying the book title, author, edition, and
24 International Standard Book Number (“ISBN”) that is specific to each book. A staff member will
25 then respond to the request with the book price, which is the retail price plus a 30% markup and
26 the cost of shipping, if applicable. See Compl. Ex. A.

27 While plaintiff acknowledges the intent of the policy is to “control[] the contraband of
28 drugs at the institution,” he argues that it is overly restrictive, it violates his First Amendment and

1 equal protection rights, and it is in violation of the Sherman Act, the Trade Commission Act, and
2 the Clayton Act (1936).

3 Plaintiff seeks injunctive relief and offers a “possible solution to this issue ... that the 30%
4 be eliminated and the (ISBN) not be required.” His complaint suggests that he also seeks punitive
5 damages.

6 **IV. Discussion**

7 In two identical filings titled “Motion for Summary Judgment,” plaintiff submits evidence
8 showing that the disputed book policy was rescinded on May 1, 2018, by the new Acting Warden
9 of USP-Atwater. Pl.’s May 11, 2018, Mot. Summ. J. Ex. A (Doc. 9 at 8); Pl.’s June 7, 2018, Mot.
10 Summ. J. Ex. A (Doc. 10 at 8).

11 The case or controversy requirement of Article III of the Federal Constitution deprives the
12 Court of jurisdiction to hear moot cases. Iron Arrow Honor Soc’y v. Heckler, 464 U.S. 67, 70
13 (1983); NAACP., Western Region v. City of Richmond, 743 F.2d 1346, 1352 (9th Cir. 1984). A
14 case becomes moot if the “the issues presented are no longer ‘live’ or the parties lack a legally
15 cognizable interest in the outcome.” Murphy v. Hunt, 455 U.S. 478, 481 (1984). The Federal
16 Court is “without power to decide questions that cannot affect the rights of the litigants before
17 them” North Carolina v. Rice, 404 U.S. 244, 246 (1971) per curiam, quoting Aetna Life Ins. Co.
18 v. Hayworth, 300 U.S. 227, 240-41 (1937).

19 The book policy memo that plaintiff claims violates his constitutional rights and various
20 statutes has been rescinded. As such, there is no longer a case or controversy to resolve, and this
21 matter is moot.

22 In his pending motions, plaintiff seeks \$1,000 in punitive damages to cover the filing fee
23 in this case and other costs. It is true that punitive damages may be awarded in a § 1983 action
24 “when the defendant's conduct is shown to be motivated by evil motive or intent, or when it
25 involves reckless or callous indifference to the federally protected rights of others.” Dang v.
26 Cross, 422 F.3d 800, 807 (9th Cir. 2005) (quoting Smith v. Wade, 461 U.S. 30, 56 (1986)). In this
27 case, punitive damages are not warranted since the action was mooted before consideration of
28 plaintiff’s claims and service on defendant.

1 Nonetheless, considering that the book policy was rescinded shortly after plaintiff initiated
2 this action and before his complaint could be screened, the Court finds good cause to vacate the
3 order directing the Clerk of Court to deduct money from plaintiff's account. The Court will
4 therefore construe plaintiff's pending motions as requests for reimbursement of costs and will
5 grant the motions accordingly.

6 **V. Conclusion**

7 Based on the foregoing, the Court **ORDERS** as follows:

- 8 1. The January 18, 2018, Order granting plaintiff's application to proceed in forma
9 pauperis and directing the Warden of USP-Atwater to deduct funds from plaintiff's
10 prisoner trust account (Doc. 4) is hereby **VACATED**;
- 11 2. A copy of this order **SHALL** be served on the Financial Department for the Eastern
12 District of California and the Litigation Coordinator at USP-Atwater;
- 13 3. Any funds previously withdrawn from plaintiff's prisoner trust account shall be
14 **REFUNDED** within thirty days; and
- 15 4. This action is **CLOSED**.

16
17 IT IS SO ORDERED.

18 Dated: November 11, 2018

/s/ Jennifer L. Thurston
19 UNITED STATES MAGISTRATE JUDGE