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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

* * *

RONNIE O. BROWN,
Plaintiff,
vs.
CALIFORNIA DEPARTMENT OF
CORRECTIONS
Defendant.

2:08-CV-- 01467-PMP-GWF

ORDER

Before the Court for consideration is Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Could be Granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure, and (Doc. #26). Having read and considered this fully briefed motion the Court finds that Defendant's Motion to Dismiss must be granted.

The sole surviving claim in Plaintiff's Second Amended Complaint is that Plaintiff's denial of participation in a substance abuse treatment program because of his vision disability provides a basis for relief under Title II of the Americans with Disabilities Act ("ADA"). Defendants assert three viable arguments as a basis for dismissing Plaintiff's complaint.

First, Plaintiff's claim fails to demonstrate that he seeks relief from a


1 danger of serious physical injury which was imminent at the time of filing this
2 action. As a result, Plaintiff is barred from using the *in forma pauperis* privilege.

3 Second, Plaintiff has failed to exhaust appropriate and available
4 administrative remedies. Plaintiff's letters and requests for medical attention are
5 insufficient to satisfy this requirement.

6 Third, Plaintiff fails to state a claim under the ADA because, as argued by
7 the Defendant, no cause of action for punitive damages is available under Title II of
8 the ADA, and his claim for injunctive relief is barred.

9 **IT IS THEREFORE ORDERED** that Defendant's Motion to Dismiss
10 (Doc. 26) is GRANTED and the judgement is hereby entered in favor of the
11 Defendant and against Plaintiff.

12 DATED September 14, 2009.

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15 PHILIP M. PRO
16 United States District Judge
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