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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 MELVIN BROOKINS,

10 Plaintiff,

No. CIV S-09-0841 GGH P

11 vs.

12 MICHAEL MCDONALD, Warden,

13 Defendant.

ORDER

14 _____/
15 Plaintiff, a state prisoner at High Desert State Prison, has filed a document styled
16 “motion for preliminary injunction,” seeking an order prohibiting his transfer from High Desert
17 State Prison to another institution until the prosthetic device to replace his amputated right leg
18 can be completed and fitted correctly. Plaintiff concedes that he has not yet filed a civil rights
19 action pursuant to 42 U.S.C. § 1983. In order to commence an action, plaintiff must file a
20 complaint as required by Rule 3 of the Federal Rules of Civil Procedure. Although plaintiff has
21 not filed the appropriate form for this district, plaintiff has filed an application requesting leave to
22 proceed in forma pauperis.¹ See 28 U.S.C. § 1915(a). Until plaintiff files a complaint naming
23 the appropriate defendant, this court cannot determine whether it has either personal or subject
24 matter jurisdiction. Therefore, the court cannot issue any orders granting or denying relief until
25 _____

26 ¹ If leave to file in forma pauperis is granted, plaintiff will still be required to pay the
filing fee but will be allowed to pay it in installments.

1 an action has been properly commenced. Plaintiff's motion for preliminary injunctive relief will
2 be vacated without prejudice. Plaintiff will be provided the opportunity to file his complaint, but
3 the court will not require the filing of any further application requesting leave to proceed in
4 forma pauperis.

5 In accordance with the above, IT IS HEREBY ORDERED that:

6 1. Plaintiff's March 26, 2009, motion for preliminary injunction (Docket No. 1) is
7 vacated without prejudice to the filing of an appropriate complaint;

8 2. Plaintiff is granted thirty days from the date of service of this order to file a
9 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
10 Procedure, and the Local Rules of Practice; the complaint must bear the docket number assigned
11 this case; plaintiff must file an original and two copies of the complaint. Upon the filing of the
12 complaint, the court will rule on plaintiff's application to proceed in forma pauperis. Plaintiff's
13 failure to comply with this order will result in a recommendation that this matter be dismissed;

14 3. The Clerk of the Court is directed to send plaintiff the court's form for filing a
15 civil rights action; and

16 4. The Clerk of the Court is further directed to serve a copy of this order, as well
17 as plaintiff's March 26, 2009 (docket # 1), motion for preliminary injunction, upon Jennifer
18 Neill, Supervising Deputy Attorney General.

19 DATED: April 7, 2009

20
21 /s/ Gregory G. Hollows

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GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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