

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

MELVIN BROOKINS,

Plaintiff, No. CIV S-09-0841 GGH P

VS.

MICHAEL MCDONALD, Warden,

Defendant. ORDER

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

<sup>1</sup> 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 /s/ Gregory G. Hollows

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21 GREGORY G. HOLLOWNS  
22 UNITED STATES MAGISTRATE JUDGE

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