

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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

MARCUS RUBEN ELLINGTON,

Plaintiff,

No. 2:09-cv-2985 JFM

vs.

DIRECTOR OF CORRECTIONS,  
et al.,

Defendants.

ORDER

\_\_\_\_\_/

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983, together with a request to proceed in forma pauperis. On October 26, 2009, plaintiff filed a complaint against various defendants at High Desert State Prison alleging defendants incited inmates to beat plaintiff up and required plaintiff to continue working despite painful physical injuries sustained in the beating. Plaintiff attached to that complaint a document entitled "Supplemental Complaint" in which he names defendants at Kern Valley State Prison, and alleges defendants at Kern Valley State Prison are refusing to acknowledge his disabled status and have taken his wheelchair and walker, in violation of the ADA.

Although plaintiff claims these two complaints are related, this court finds that they raise unrelated allegations requiring analysis under different standards against defendants

1 located in two separate divisions of this court. In the supplemental complaint, plaintiff alleges  
2 violations of his civil rights that took place in Kern County, which is part of the Fresno Division  
3 of the United States District Court for the Eastern District of California. See Local Rule 3-  
4 120(d).

5 Pursuant to Local Rule 3-120(f), a civil action which has not been commenced in  
6 the proper division of a court may, on the court's own motion, be transferred to the proper  
7 division of the court. Therefore, the supplemental complaint, its exhibits, and plaintiff's  
8 November 16, 2009 and November 23, 2009 motions, will be transferred to the Fresno Division  
9 of the court. In light of 1996 amendments to 28 U.S.C. § 1915, this court will not rule on  
10 plaintiff's request to proceed in forma pauperis. In addition, the court has not ruled on plaintiff's  
11 motions for immediate action. (Docket Nos. 8 & 9.)

12 The instant action will continue as to defendants Director of the California  
13 Department of Corrections and Rehabilitation and defendants located at High Desert State  
14 Prison. The court will address that complaint in a separate order.

15 Good cause appearing, IT IS HEREBY ORDERED that:

- 16 1. This court has not ruled on plaintiff's request to proceed in forma pauperis;
- 17 2. This court has not ruled on plaintiff's November 16, 2009 and November 23,  
18 2009 motions for immediate action;
- 19 3. Plaintiff's supplemental complaint is transferred to the United States District  
20 Court for the Eastern District of California sitting in Fresno;
- 21 4. Any future filings concerning the defendants at Kern Valley State Prison shall  
22 reference the new Fresno case number assigned and shall be filed at:

23 United States District Court  
24 Eastern District of California  
25 2500 Tulare Street  
26 Fresno, CA 93721

////

1                   5. The Clerk of the Court is directed to provide the October 26, 2009  
2 Supplemental Complaint (pages 5 - 11), Exhibits A, B, C, D, E (pages 13-31), Notice (pages 32-  
3 40); Addendum (pages 41-47), Claim No. 2 (pages 48-49), and Exhaustion of Administrative  
4 Remedies (page 50), to the Fresno Division for filing as a new action, along with plaintiff's  
5 November 16, 2009, November 23, 2009 and November 30, 2009 motions (docket nos. 8, 9 &  
6 10) and plaintiff's November 30, 2009 letter (docket no. 11).

7                   6. The instant action will continue as to defendants Director of the California  
8 Department of Corrections and Rehabilitation, and defendants located, and allegations occurring  
9 at, High Desert State Prison.

10 DATED: December 8, 2009.

11  
12   
13 UNITED STATES MAGISTRATE JUDGE

14 /001; elli2985.22  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26