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

JEREMY JAMISON, aka
DWAYNE GARRETT,

Plaintiff,

No. CIV S-10-0124 JAM EFB PS

vs.

DAVIS ENTERPRISE NEWSPAPER,
et al.,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He proceeds *in forma pauperis*. See 28 U.S.C. § 1915. On October 8, 2010, the court determined that plaintiff’s amended complaint stated a cognizable claim for relief against defendants Bailey, Shaid, and Johnson. Plaintiff submitted the required documents, and by separate order, the court ordered service on these defendants.

Plaintiff has filed a number of additional pleadings and motions which are addressed herein. See Dckt. Nos. 46 (motion for discovery), 48 (motion for injunction), 49 (motion to amend the complaint), 51 (third amended prisoner civil rights complaint), 52 (motion for depositions), and 53 (motion for summary judgment).

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1 **I. Discovery**

2 Plaintiff's motion for discovery asks that several documents "be made available to the
3 court." Similarly, plaintiff's motion for depositions asks that the court order that certain
4 witnesses to the allegations in his complaint be deposed.

5 Plaintiff is advised that he must seek discovery directly from defendants, and not from
6 the court and he is directed to the Federal Rules of Civil Procedure as to the methods by which
7 he may conduct discovery. After the defendants have appeared in the case, plaintiff may seek
8 discovery from them through the processes described in those rules and if a discovery dispute
9 arises plaintiff may address it through an appropriate motion to compel provided by the federal
10 rules. Plaintiff's motions for discovery and depositions (Dckt. Nos. 46, 52) are denied as
11 premature.

12 **II. Motion for Injunction**

13 Plaintiff's motion for an injunction states that his jail time in New Hampshire will soon
14 be up and he will be transferred back to Deuel Vocational Institute, where the defendants in this
15 case work. Dckt. No. 48 at 1. He states that he is in danger of being harmed because there is "an
16 existing non refutable history and pattern of abuse." *Id.* He states that even though he is a
17 minimum security nonviolent offender who is scheduled to be released in six months, he has
18 been housed with prisoners who have life sentences, and these inmates are "known to be
19 personal attack dogs for officers who reward them with privileges, drugs or cigarettes." *Id.* at 2.
20 He also states that he is being denied treatment for "serious medical issues like Hep C which can
21 kill him if gone untreated," and that he is "constantly abused even though he is disabled by being
22 forced to make unreasonable walks, and climb steep steps." *Id.* He asks that he be moved to a
23 minimum security federal prison until he is released. *Id.* at 3.

24 A preliminary injunction will not issue unless necessary to prevent threatened injury that
25 would impair the court's ability to grant effective relief in a pending action. *Sierra On-Line, Inc.*
26 *v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir.1984); *Gon v. First State Ins. Co.*, 871

1 F.2d 863 (9th Cir.1989). A preliminary injunction represents the exercise of a far reaching power
2 not to be indulged except in a case clearly warranting it. *Dymo Indus. v. Tapeprinter, Inc.*, 326
3 F.2d 141, 143 (9th Cir.1964). In order to be entitled to preliminary injunctive relief, a party must
4 demonstrate “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm
5 in the absence of preliminary relief, that the balance of equities tips in his favor, and that an
6 injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir.
7 2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, ___ U.S. ___, 129 S.Ct. 365, 374 (2008)).
8 The Ninth Circuit has also held that the "sliding scale" approach it applies to preliminary
9 injunctions-that is, balancing the elements of the preliminary injunction test, so that a stronger
10 showing of one element may offset a weaker showing of another-survives *Winter* and continues
11 to be valid. *Alliance for Wild Rockies v. Cottrell*, ___ F.3d ___, 2010 WL 2926463, *3-4 (filed
12 July 28, 2010). In cases brought by prisoners involving conditions of confinement, any
13 preliminary injunction “must be narrowly drawn, extend no further than necessary to correct the
14 harm the court finds requires preliminary relief, and be the least intrusive means necessary to
15 correct the harm.” 18 U.S.C. § 3626(a)(2).

16 Here, plaintiff has failed to make such a showing. First, he has not demonstrated that he
17 is likely to succeed on the merits in the underlying matter. His motion for an injunction does not
18 thoroughly address the merits of his underlying case, and provides no evidence save a copy of a
19 chrono showing that plaintiff has certain disabilities. Second, he has not convincingly shown
20 that he is likely to suffer irreparable harm in the absence of injunctive relief. Although he states
21 that the correctional officers that he sued may retaliate against him by bribing inmates to assault
22 him, this contention is too speculative to clearly warrant the “exercise of a far reaching power”
23 such as a preliminary injunction. Plaintiff has not demonstrated that the balance of equities tips
24 in his favor or that an injunction is in the public interests. Thus, his motion for a preliminary
25 injunction must be denied.

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1 **III. Motion to Amend the Complaint**

2 Plaintiff has filed a motion to amend the complaint and a third amended civil rights
3 complaint. Dckt. No. 49. His motion states that he wishes to add as defendants Dr. Kim and Dr.
4 Malet, the chief medical officer and the acting physician at Deuel Vocational Institute. *Id.* at 1.
5 He states that Dr. Malet refused to treat his hepatitis C. Dr. Malet allegedly told plaintiff that he
6 would not begin a year long treatment because plaintiff was due to be released in five months
7 and “we could just put it off ‘til you leave and save the taxpayers about four thousand dollars.”
8 *Id.* Plaintiff also filed two documents titled “Amended Complaint 2–supplemental.” Dckt. Nos.
9 49-1, 2. The first document explains his claims against defendants Bailey, Johnson, and Shaid,
10 and the second document asks that the court serve the Davis Enterprise Newspaper as a
11 defendant in this action, as plaintiff wishes to sue them for racial profiling, bias, defamation, and
12 cruel and unusual treatment.

13 Plaintiff has also filed a document styled “third amended prisoner civil rights complaint.”
14 *See* Dckt. No. 51. He asks that the court serve Dr. Espisito and Nurse Achilles of the Grafton
15 County Department of Corrections Medical Department. He states that he asked them to treat
16 his Hepatitis C, but that they responded, “although they ordered a Hep C test and it was positive
17 that since California didn’t see fit to treat me, neither would they, and that ‘it’s not our
18 problem.”” *Id.* at 1.

19 Plaintiff is entitled to amend his complaint once as a matter of course within 21 days of
20 serving it or 21 days after service of a responsive pleading or 21 days after service of a motion
21 under Rule 12(b), (e), or (f), whichever is earlier. Fed. R. Civ. P. 15(a). Notwithstanding the
22 labels plaintiff has used on his additional filings, he has not filed an amended complaint. He has
23 only filed documents which, at best, constitute attempts to file supplemental complaints which
24 are not permitted under the Local Rules, but not a true amended complaint. Thus, plaintiff is
25 currently free to amend his complaint. However, plaintiff is admonished that an amended
26 complaint must be complete in itself without reference to any prior pleading. E.D. Cal. Local

1 Rule 220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended
2 complaint, the original pleading is superseded.

3 Therefore, plaintiff's motion to amend his complaint is denied as unnecessary. If
4 plaintiff wishes to file an amended complaint, he must include all of his allegations against all
5 defendants in a single document. Plaintiff is advised that he may not sue defendants on the same
6 theories that the court has already rejected in previous orders.

7 **IV. Default Judgment**

8 Plaintiff has filed a document titled "motion for summary judgment" which the court
9 construes as a motion for default judgment. *See* Dckt. No. 53. He states that defendants have
10 failed to respond to the complaint within 21 days. *Id.* Plaintiff does not seem to realize that at
11 the time the motion was filed, defendants had not yet been served. Thus, defendants are not
12 tardy in filing their response, and the motion should be denied.

13 Accordingly, it is hereby ORDERED that:

- 14 1. Plaintiff's motions for discovery are denied,
- 15 2. Plaintiff's motion to amend his complaint is denied as unnecessary, and
- 16 3. The Clerk is directed to terminate Dckt. Nos. 46, 49, and 52.

17 Further, it is hereby RECOMMENDED that:

- 18 1. Plaintiff's motion for a preliminary injunction be denied,
- 19 2. Plaintiff's motion for a default judgment be denied, and
- 20 3. The Clerk be directed to terminate Dckt. Nos. 48 and 53.

21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
23 after being served with these findings and recommendations, any party may file written
24 objections with the court and serve a copy on all parties. Such a document should be captioned

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1 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
2 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
3 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

4 DATED: December 9, 2010.

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6 EDMUND F. BRENNAN
7 UNITED STATES MAGISTRATE JUDGE
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