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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TONY ASBERRY,
Plaintiff,
v.
MATTHEW CATE, et al.,
Defendants.

No. 2: 11-cv-2462 KJM KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for injunctive relief filed October 7, 2013. (ECF No. 121.)

Plaintiff, who is housed at the R.J. Donovan Correctional Facility (“RJDCF”), alleges that on October 2, 2013, Captain Stout and Lieutenant Rink told plaintiff that he was no longer allowed to use a wheelchair. (Id. at 2.) Captain Stout and Lieutenant Rink told plaintiff that he would have to use a walker instead. (Id.) Plaintiff alleges that he must use the wheelchair because of back pain. (Id. at 7.) Plaintiff requests that the court order prison officials at RJDCF to return the wheelchair. (Id.)

No defendants in this action are located at RJDCF. Therefore, plaintiff is seeking injunctive relief against individuals who are not named as defendants in this action. The court is unable to issue an order against individuals who are not parties to a suit pending before it. See

1 Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969). For this reason, the
2 undersigned recommends that plaintiff's October 7, 2013 motion for injunctive relief be denied.¹


3 Plaintiff may pursue his claims regarding inadequate medical care at RJDCF by filing a civil
4 rights action in the United States District Court for the Southern District of California.

5 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's motion for injunctive
6 relief (ECF No. 121) be denied.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
12 objections shall be filed and served within fourteen days after service of the objections. The
13 parties are advised that failure to file objections within the specified time may waive the right to
14 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: October 10, 2013

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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24 ¹ The undersigned has determined that ordering prison officials at RJDCF to respond to
25 plaintiff's motion pursuant to the All Writs Act, 28 U.S.C. § 1651(a), is not warranted. Plaintiff's
26 claim regarding the confiscation of his wheelchair at RJDCF is unrelated to the claims on which
27 this action is proceeding. Pursuant to the All Writs Act, the undersigned previously ordered
28 RJDCF to respond to plaintiff's claims alleging confiscation of his legal property. (ECF No. 105.)
The undersigned was concerned that the court would lose jurisdiction if plaintiff did not have
access to his legal property. (Id.) Because the claims raised in the pending motion are not
directly related to plaintiff's ability to litigate this action, they should be raised in a separate
action.