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

ROBERT BENYAMINI,

Plaintiff,

No. 2:13-CV-0205 MCE AC PS

vs.

M. BLACKBURN, et al.

Defendants.

ORDER

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Plaintiff, proceeding in this action pro se, has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302(21), pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted an affidavit making the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, the request to proceed in forma pauperis will be granted.

The complaint states a cognizable claim for relief, to wit: plaintiff’s claim for damages against defendants Blackburn and Marzan, in their individual capacities for money damages, for use of excessive force in violation of the Eighth Amendment. If the allegations of the complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action.

1 Plaintiff also seeks injunctive relief, including restriction of certain kinds of chairs  
2 “from prison and jail facilities,” better health care, and availability of polygraph testing to  
3 inmates who are disciplined. See ECF 1 at 10. However, plaintiff is no longer incarcerated, and  
4 the complaint reflects that he was not incarcerated at the time he filed the complaint. See ECF  
5 No. 1 at 1; ECF No. 7 at 1. Plaintiff has not alleged that there is any reasonable expectation or  
6 demonstrated probability that plaintiff will again return to prison, and accordingly it is unlikely  
7 that plaintiff will ever again be subject to the restrictions he seeks to remedy. See Darring v.  
8 Kinchloe, 783 F.2d 874, 876 (9th Cir. 1986), citing Murphy v. Hunt, 455 U.S. 478, 483 (1982).  
9 Plaintiff’s claim for injunctive relief is accordingly moot. Id. Since this deficiency cannot be  
10 cured by amendment, the court will not dismiss the complaint with leave to amend. See, e.g.,  
11 Schmier v. U.S. Court of Appeals for the Ninth Circuit, 279 F.3d 817, 824 (9th Cir. 2002)  
12 (amendment of complaint was futile where it was not factually possible for plaintiff to amend the  
13 complaint so as to satisfy the standing requirement).

14 Good cause appearing, IT IS ORDERED that:

15 1. Plaintiff’s request for leave to proceed in forma pauperis is granted.  
16 2. Service is appropriate for the following defendants: M. Blackburn; J. Marzan.  
17 3. The Clerk of the Court is directed to issue forthwith, and the U.S. Marshal is  
18 directed to serve within ninety days of the date of this order, all process pursuant to Fed. R. Civ.  
19 P. 4, including a copy of this court’s status order, without prepayment of costs.

20 4 The Clerk of the Court shall send plaintiff one USM-285 form for each  
21 defendant, one summons, a copy of the complaint, an appropriate form for consent to trial by a  
22 magistrate judge, and this court’s status order.

23 5. Plaintiff is directed to supply the U.S. Marshal, within 15 days from the date  
24 this order is filed, all information needed by the Marshal to effect service of process, and *shall*  
25 *file a statement with the court that said documents have been submitted to the United States*  
26 *Marshal*. The court anticipates that, to effect service, the U.S. Marshal will require at least:

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- a. One completed summons for each defendant;
- b. One completed USM-285 form for each defendant;
- c. One copy of the endorsed filed complaint for each defendant, with an extra copy for the U.S. Marshal;
- d. One copy of this court’s status order for each defendant; and
- e. One copy of the instant order for each defendant.

6. In the event the U.S. Marshal is unable, for any reason whatsoever, to effectuate service on any defendant within 90 days from the date of this order, the Marshal is directed to report that fact, and the reasons for it, to the undersigned.

7. The Clerk of the Court is directed to serve a copy of this order on the U.S. Marshal, 501 “T” Street, Sacramento, Ca., 95814, Tel. No. (916) 930-2030.

8. Failure to comply with this order may result in a recommendation that this action be dismissed.

DATED: April 22, 2013.

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE

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