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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WONDIYRAD KABEDE,
Plaintiff,
v.
GARY BROWN, et al.,
Defendants.

No. 2:16-cv-1765 DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and 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 pursuant to 28 U.S.C. § 636(b)(1). Before the court are plaintiff’s motion to proceed in forma pauperis, the screening of plaintiff’s complaint, plaintiff’s request for the appointment of counsel, plaintiff’s motion for a physical and mental examination, and plaintiff’s motion for the court to review documents. Each is addressed below.

IN FORMA PAUPERIS

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

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in

1 accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct
2 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and
3 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments
4 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.
5 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time
6 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §
7 1915(b)(2).

8 SCREENING

9 I. Legal Standards

10 The court is required to screen complaints brought by prisoners seeking relief against a
11 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
12 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
13 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
14 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

15 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
16 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
17 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
18 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
19 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
20 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
21 Cir. 1989); Franklin, 745 F.2d at 1227.

22 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon
23 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in
24 support of the claim or claims that would entitle him to relief. Hishon v. King & Spalding, 467
25 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer v. Roosevelt
26 Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a complaint under
27 this standard, the court must accept as true the allegations of the complaint in question, Hosp.
28 Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light

1 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor, Jenkins v.
2 McKeithen, 395 U.S. 411, 421 (1969).

3 **II. Allegations in Plaintiff's Complaint**

4 In the caption, plaintiff lists the defendants as "Governor Gary Brown," "Mrs. Kamala Harris
5 - Attorney General," "California Parole Board," "Dr. Barnett – Sacramento Medical
6 Headquarters," and "Detainer Warden." However, on the following page under the heading
7 "Defendants," he lists the following personnel at Mule Creek State Prison: "Dr. S. Heatley," the
8 "Chief Medical Officer;" "Dr. James Jackson," the "Assistant C.M.O.;" "Dr. Sam Wong," the
9 "'A' Facility Clinic Doctor;" and "Mr. Jerry Dowdy," the "Prison Mail Room Supervisor."

10 Plaintiff's complaint is difficult to decipher. It appears plaintiff is alleging the following. His
11 first claim is labelled a medical claim. Plaintiff states that he was implanted with a "bio-technical
12 implant" which caused him heart failure. However, plaintiff also states that he refused to have
13 the surgery to put in the implant. Plaintiff states that he is in pain and can barely walk.

14 Plaintiff's second claim is labelled a "mail" and "threat to safety" claim.¹ He states that his
15 pain makes it impossible for him to communicate with the outside world. His requests for
16 assistance in calling his immediate family have been denied. Also, his legal mail was not sent
17 out. He further states that his food and medication are contaminated with a flu virus. Finally, he
18 contends his administrative appeal has been held up due to its complexity.

19 Plaintiff's third claim is labelled as addressing disciplinary proceedings, threat to safety, and
20 retaliation. Therein, plaintiff states that he filed a 2015 action in this court to stop prison officials
21 from harassing him with false disciplinary rules violations. He claims that based on the grievance
22 he filed, which is addressed in claim 2 in this case, he again was cited for a false disciplinary rules
23 violation. Plaintiff concludes by stating that "they" are trying to get him raped.

24 In his request for relief, plaintiff asks for the appointment of counsel, for the prison to give
25 him appropriate medical treatment, and for the court to order an investigation into what was
26 "done to [his] body."

27 ¹ This court's complaint form that plaintiff used requires that plaintiff's check only one subject
28 matter for each claim. For several of his claims, plaintiff checked more than one subject.

1 **III. Analysis**

2 The court finds the allegations in plaintiff’s complaint so vague and conclusory that it is
3 unable to determine whether the current action is frivolous or fails to state a claim for relief. The
4 court has determined that the complaint does not contain a short and plain statement as required
5 by Fed. R. Civ. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy, a
6 complaint must give fair notice and state the elements of the claim plainly and succinctly. Jones
7 v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff fails to identify what each
8 defendant has done, or not done. Plaintiff must allege with at least some degree of particularity
9 overt acts which defendants engaged in that support plaintiff’s claim. Id. Because plaintiff has
10 failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be
11 dismissed. The court will, however, grant leave to file an amended complaint.

12 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
13 complained of have resulted in a deprivation of his constitutional rights. See Ellis v. Cassidy, 625
14 F.2d 227 (9th Cir. 1980). Also, the complaint must allege in specific terms how each named
15 defendant is involved. There can be no liability under 42 U.S.C. § 1983 unless there is some
16 affirmative link or connection between a defendant’s actions and the claimed deprivation. Rizzo
17 v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v.
18 Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

19 Furthermore, supervisory personnel are generally not liable under § 1983 for the actions
20 of their employees under a theory of respondeat superior and, therefore, when a named defendant
21 holds a supervisory position, the causal link between him and the claimed constitutional
22 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);
23 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations of
24 official participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d
25 266, 268 (9th Cir. 1982).

26 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
27 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended
28 complaint be complete in itself without reference to any prior pleading. This is because, as a

1 general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
2 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint, the original pleading no
3 longer serves any function in the case. Therefore, in an amended complaint, as in an original
4 complaint, each claim and the involvement of each defendant must be sufficiently alleged.

5 Plaintiff appears to be attempting to allege the following claims: (1) an Eighth
6 Amendment claim based on his medical care; (2) an Eighth Amendment claim based on threats to
7 his health and safety; (3) a claim for retaliation based on the exercise of his First Amendment
8 rights; and (4) a First Amendment claim regarding the handling of his legal mail. Below, the
9 court sets out the legal standards for each of these claims. If plaintiff chooses to amend his
10 complaint, he must make specific allegations about what each defendant did, or did not do, that
11 resulted in a constitutional violation by setting out the elements of each legal claim.

12 **A. Eighth Amendment Medical Claim**

13 In order to state a claim under the Eighth Amendment regarding medical care, plaintiff
14 must allege and prove that he suffered a sufficiently serious deprivation (the objective prong of
15 the claim) and that officials acted with deliberate indifference in allowing or causing the
16 deprivation to occur (the subjective prong of the claim). Wilson v. Seiter, 501 U.S. 294, 298-99
17 (1991). Thus, when a prisoner's Eighth Amendment claim arises in the context of medical care,
18 the prisoner must allege and prove "acts or omissions sufficiently harmful to evidence deliberate
19 indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). A viable
20 Eighth Amendment medical claim, then, states two elements: "the seriousness of the prisoner's
21 medical need and the nature of the defendant's response to that need." McGuckin v. Smith, 974
22 F.2d 1050, 1059 (9th Cir. 1991), overruled on other grounds by WMX Techs., Inc. v. Miller, 104
23 F.3d 1133 (9th Cir. 1997) (en banc).

24 A medical need is serious "if the failure to treat the prisoner's condition could result in
25 further significant injury or the 'unnecessary and wanton infliction of pain.'" McGuckin, 974
26 F.2d at 1059 (quoting Estelle, 429 U.S. at 104). Indications of a serious medical need include
27 "the presence of a medical condition that significantly affects an individual's daily activities." Id.
28 at 1059-60. By establishing the existence of a serious medical need, a prisoner satisfies the

1 objective requirement for proving an Eighth Amendment violation. Farmer v. Brennan, 511 U.S.
2 825, 834 (1994).

3 If a prisoner establishes the existence of a serious medical need, he must then show that
4 prison officials responded to it with deliberate indifference. Farmer, 511 U.S. at 834. In general,
5 a prisoner may show deliberate indifference with evidence that officials denied, delayed, or
6 intentionally interfered with medical treatment, or he may show it by the way in which prison
7 officials actively provided medical care. Hutchinson v. United States, 838 F.2d 390, 393-94 (9th
8 Cir. 1988). Before it can be said that a prisoner's civil rights were violated by inadequate medical
9 care, however, "the indifference to his medical needs must be substantial. Mere 'indifference,'
10 'negligence,' or 'medical malpractice' will not support this cause of action." Broughton v. Cutter
11 Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06). See also
12 Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) ("Mere negligence in
13 diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth
14 Amendment rights."); McGuckin, 974 F.2d at 1059 (same). Deliberate indifference is "a state of
15 mind more blameworthy than negligence" and "requires 'more than ordinary lack of due care for
16 the prisoner's interests or safety.'" Farmer, 511 U.S. at 835 (quoting Whitley v. Albers, 475 U.S.
17 312, 319 (1986)).

18 **B. Eighth Amendment Claim of Threats to Health and Safety**

19 Stating a claim under the Eighth Amendment regarding health and safety similarly
20 requires plaintiff to show he suffered a sufficiently serious deprivation and that officials acted
21 with deliberate indifference in allowing or causing the deprivation to occur. It is well established
22 that "prison officials have a duty ... to protect prisoners from violence at the hands of other
23 prisoners." Farmer, 511 U.S. at 833. "Being violently assaulted in prison is simply not 'part of
24 the penalty that criminal offenders pay for their offense against society.'" Id. at 834. However,
25 prison officials do not incur constitutional liability for every injury suffered by a prisoner at the
26 hands of another prisoner. Id. Plaintiff must show a prison official had a "sufficiently culpable
27 state of mind," one of deliberate indifference to the inmate's health or safety. Id.

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1 **C. First Amendment Retaliation Claim**

2 “Within the prison context, a viable claim of First Amendment retaliation entails five
3 basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2)
4 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's
5 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate
6 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567–68 (9th Cir. 2005) (footnote and
7 citations omitted).

8 Under the first element, plaintiff need not prove that the alleged retaliatory action, in
9 itself, violated a constitutional right. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (to
10 prevail on a retaliation claim, plaintiff need not “establish an independent constitutional interest”
11 was violated); see also Hines v. Gomez, 108 F.3d 265, 269 (9th Cir. 1997) (“[P]risoners may still
12 base retaliation claims on harms that would not raise due process concerns.”); Rizzo v. Dawson,
13 778 F.2d 527, 531 (9th Cir. 1985) (transfer of prisoner to a different prison constituted adverse
14 action for purposes of retaliation claim). The interest cognizable in a retaliation claim is the right
15 to be free of conditions that would not have been imposed but for the alleged retaliatory motive.
16 However, not every allegedly adverse action is sufficient to support a claim for retaliation under §
17 1983. Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012) (harm must be “more than
18 minimal”); see also Bell v. Johnson, 308 F.3d 594, 603 (6th Cir. 2002) (“[S]ome adverse actions
19 are so de minimis that they do not give rise to constitutionally cognizable injuries.”).

20 To prove the second element, retaliatory motive, plaintiff must show that his protected
21 activities were a “substantial” or “motivating” factor behind the defendant's challenged conduct.
22 Brodheim v. Cry, 584 F.3d 1262, 1271 (9th Cir. 2009) (quoting Soranno's Gasco, Inc. v. Morgan,
23 874 F.2d 1310, 1314 (9th Cir. 1989)). Plaintiff must provide direct or circumstantial evidence of
24 defendant's alleged retaliatory motive; mere speculation is not sufficient. See McCollum v. Cal.
25 Dep't of Corr. and Rehab., 647 F.3d 870, 882–83 (9th Cir. 2011); accord Wood v. Yordy, 753
26 F.3d 899, 905 (9th Cir. 2014). In addition to demonstrating defendant's knowledge of plaintiff's
27 protected conduct, circumstantial evidence of motive may include: (1) proximity in time between
28 the protected conduct and the alleged retaliation; (2) defendant's expressed opposition to the

1 protected conduct; and (3) other evidence showing that defendant's reasons for the challenged
2 action were false or pretextual. McCollum, 647 F.3d at 882 (quoting Allen v. Iranon, 283 F.3d
3 1070, 1077 (9th Cir. 2002)).

4 The third element includes prisoners' First Amendment right of access to the courts.
5 Lewis v. Casey, 518 U.S. 343, 346 (1996). While prisoners have no freestanding right to a prison
6 grievance process, see Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003), “a prisoner's
7 fundamental right of access to the courts hinges on his ability to access the prison grievance
8 system,” Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir. 1995), overruled on other grounds by
9 Shaw v. Murphy, 532 U.S. 223, 230 n. 2 (2001). Because filing administrative grievances and
10 initiating civil litigation are protected activities, it is impermissible for prison officials to retaliate
11 against prisoners for engaging in these activities. Rhodes, 408 F.3d at 567.

12 Under the fourth element, plaintiff need not demonstrate a “total chilling of his First
13 Amendment rights,” only that defendant's challenged conduct “would chill or silence a person of
14 ordinary firmness from future First Amendment activities.” Id. at 568–69 (citation and internal
15 quotation marks omitted). Moreover, direct and tangible harm will support a retaliation claim
16 even without demonstration of a chilling effect on the further exercise of a prisoner's First
17 Amendment rights. Id. at 568 n. 11. “[A] plaintiff who fails to allege a chilling effect may still
18 state a claim if he alleges he suffered some other harm” as a retaliatory adverse action.
19 Brodheim, 584 F.3d at 1269 (citing Rhodes, 408 F.3d at 568 n. 11).

20 Regarding the fifth element, the Ninth Circuit has held that preserving institutional order,
21 discipline, and security are legitimate penological goals that, if they provide the motivation for an
22 official act taken, will defeat a claim of retaliation. Barnett v. Centoni, 31 F.3d 813, 816 (9th Cir.
23 1994); Rizzo, 778 F.2d at 532. When considering this final factor, courts should “‘afford
24 appropriate deference and flexibility’ to prison officials in the evaluation of proffered legitimate
25 penological reasons for conduct alleged to be retaliatory.” Pratt, 65 F.3d at 807 (quoting Sandin
26 v. Conner, 515 U.S. 472, 482 (1995)). Plaintiff bears the burden of pleading and proving the
27 absence of legitimate correctional goals for defendant's challenged conduct. Pratt, 65 F.3d at 806.

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1 **D. First Amendment Mail Claim**

2 Generally, prisoners have “a First Amendment right to send and receive mail.” Witherow
3 v. Paff, 52 F.3d 264, 265 (9th Cir. 1995). However, there is a “delicate balance” between
4 prisoners' First Amendment rights and the discretion given to prison administrators to govern the
5 order and security of the prison. Thornburgh v. Abbott, 490 U.S. 401, 407-08 (1989). A prison
6 may adopt regulations or practices for incoming mail which impinge on a prisoner's First
7 Amendment rights as long as the regulations are “reasonably related to legitimate penological
8 interests.” Turner v. Safley, 482 U.S. 78, 89 (1987). The Turner standard applies to regulations
9 and practices concerning all correspondence between prisoners and to regulations concerning
10 incoming mail received by prisoners from non-prisoners. Thornburgh, 490 U.S. at 413.

11 Nonetheless, isolated incidents of mail interference or tampering will not support a claim
12 under section 1983 for violation of plaintiff's constitutional rights. See Davis v. Goord, 320 F.3d
13 346, 351 (2d Cir. 2003); Gardner v. Howard, 109 F.3d 427, 431 (8th Cir. 1997); Smith v.
14 Maschner, 899 F.2d 940, 944 (10th Cir. 1990). See also Crofton v. Roe, 170 F.3d 957, 961 (9th
15 Cir. 1999) (temporary delay or isolated incident of delay of mail does not violate a prisoner's First
16 Amendment rights).

17 With respect to outgoing legal mail, prisoners have a constitutional right of access to the
18 courts. See Lewis, 518 U.S. at 346; Bounds v. Smith, 430 U.S. 817, 821 (1977). The right,
19 however, “guarantees no particular methodology but rather the conferral of a capability—the
20 capability of bringing contemplated challenges to sentences or conditions of confinement before
21 the courts.” Lewis, 518 U.S. at 356–57. In order to state a denial of access claim under the First
22 Amendment, a prisoner must allege that he suffered an “actual injury” as a result of the
23 defendants' alleged actions, by explaining how the challenged official acts or omissions hindered
24 plaintiff's efforts to pursue a nonfrivolous legal claim. Lewis, 518 U.S. at 351–55. Actual injury
25 may be shown if the alleged shortcomings “hindered his efforts to pursue a legal claim,” such as
26 having his complaint dismissed “for failure to satisfy some technical requirement,” or if he
27 “suffered arguably actionable harm that he wished to bring before the courts.” Id. at 351.

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1 The right of access to the courts applies to nonfrivolous direct criminal appeals, habeas
2 corpus proceedings, and section 1983 actions. Id. at 353 n.3, 354–55. Where a prisoner asserts a
3 backward-looking denial of access claim—one seeking a remedy for a lost opportunity to present
4 a legal claim—he must show the loss of a “nonfrivolous” or “arguable” underlying claim, “the
5 official acts frustrating the litigation,” and “a remedy that may be awarded as recompense but not
6 otherwise available in some suit that may yet be brought.” Christopher v. Harbury, 536 U.S. 403,
7 415, 417 (2002).

8 **REQUEST FOR APPOINTMENT OF COUNSEL**

9 In his complaint, plaintiff requests the appointment of counsel. The United States
10 Supreme Court has ruled that district courts lack authority to require counsel to represent indigent
11 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In
12 certain exceptional circumstances, the district court may request the voluntary assistance of
13 counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir.
14 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

15 The test for exceptional circumstances requires the court to evaluate the plaintiff’s
16 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
17 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
18 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
19 common to most prisoners, such as lack of legal education and limited law library access, do not
20 establish exceptional circumstances that would warrant a request for voluntary assistance of
21 counsel. Plaintiff simply requests appointment of counsel without attempting to make a showing
22 of exceptional circumstances. The court does not independently find the required exceptional
23 circumstances.

24 **MOTION FOR MENTAL AND PHYSICAL EXAMINATION**

25 Plaintiff seeks an order from the court requiring that he be given a mental and physical
26 examination by an “independent agency.” (ECF No. 5.) Plaintiff also complains here about his
27 lack of pain medication, and lists a number of “claims,” including claims for interference with his
28 mail and retaliation. Plaintiff is advised that he will be permitted to file an amended complaint, as

1 described above. In that amended complaint, he must include any allegations regarding his legal
2 claims. The court may not look to other filings to make plaintiff's amended complaint complete.
3 See E.D. Cal. R. 220. It appears, then, that the purpose of plaintiff's motion is an injunction
4 requiring the prison to order certain medical treatment.

5 A party requesting preliminary injunctive relief must show that "he is likely to succeed on
6 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
7 balance of equities tips in his favor, and that an injunction is in the public interest." Winter v.
8 Natural Res. Def. Council, 555 U.S. 7, 20 (2008). The propriety of a request for injunctive relief
9 hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean
10 Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

11 Plaintiff may not seek preliminary injunctive relief until the court finds that his complaint
12 presents cognizable claims. See Zepeda v. United States Immigration Serv., 753 F.2d 719, 727
13 (9th Cir. 1985) ("A federal court may issue an injunction if it has personal jurisdiction over the
14 parties and subject matter jurisdiction over the claim; [however] it may not attempt to determine
15 the rights of persons not before the court."). As explained above, plaintiff's complaint will be
16 dismissed with leave granted to file an amended complaint. Thus, plaintiff has not demonstrated
17 that he is likely to prevail on the merits of his claims. Moreover, the court has not authorized
18 service of the complaint upon any of the named defendants. Accordingly, plaintiff's motion for a
19 preliminary injunction should be denied as premature.

20 **MOTION TO REVIEW DOCUMENTS**

21 Finally, plaintiff moves the court to review 75 pages of documents which he contends
22 relate to the claims in his complaint. (ECF No. 8.) The court also notes that on September 29,
23 2016 plaintiff filed a letter regarding claims in his complaint and on October 5, 2016 he filed an
24 "update" to his complaint. As stated above, plaintiff will be given the opportunity to file an
25 amended complaint. All support for his claims must be contained in that amended complaint.
26 However, plaintiff is also warned that his amended complaint must contain a short, plain
27 statement of each claim which identifies each defendant's actions and explains why they resulted

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1 in a constitutional violation. Because plaintiff will be given an opportunity to amend his
2 complaint, his motion for the court to review documents will be denied.

3 In accordance with the above, IT IS HEREBY ORDERED that:

4 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

5 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
6 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
7 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
8 Director of the California Department of Corrections and Rehabilitation filed concurrently
9 herewith.

10 3. Plaintiff's complaint is dismissed.

11 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
12 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
13 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
14 number assigned this case and must be labeled "First Amended Complaint." Plaintiff must file an
15 original and two copies of the amended complaint. Failure to file an amended complaint in
16 accordance with this order may result in a recommendation that this action be dismissed.

17 5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint
18 form used in this district.

19 6. Plaintiff's request for the appointment of counsel is denied.

20 7. Plaintiff's motion to review documents (ECF No. 8) is denied.


21 8. Because plaintiff has not filed the form indicating his consent to the jurisdiction of a
22 magistrate judge, the Clerk of the Court shall assign a district judge to this case.

23 Further, IT IS HEREBY RECOMMENDED that plaintiff's Motion to Order Physical and
24 Mental Exam (ECF No. 5) be denied.

25 These findings and recommendations will be submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
27 after being served with these findings and recommendations, plaintiff may file written objections
28 with the court. The document should be captioned "Objections to Magistrate Judge's Findings

1 and Recommendations.” Petitioner is advised that failure to file objections within the specified
2 time may result in waiver of the right to appeal the district court’s order. Martinez v. Ylst, 951
3 F.2d 1153 (9th Cir. 1991).

4 Dated: February 21, 2017

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6 
7 DEBORAH BARNES
8 UNITED STATES MAGISTRATE JUDGE

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10 DLB1/prisoner-civil rights/Kabe1765.14new
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