

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
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LLOYD DYLAN JONES,

Plaintiff,

v.

PLACER COUNTY SHERIFF'S OFFICE,
et al.,

Defendants.

No. 2:19-cv-0342-MCE-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se in an action pursuant to 42 U.S.C. § 1983, has filed an application for leave to proceed in forma pauperis. ECF No. 2. He has also submitted an "amended complaint" (ECF No. 7), a motion for injunctive relief (ECF No. 6), a request for an order to "preserve evidence" (ECF No. 8), and a motion for the appointment of counsel (ECF No. 11).

Application to Proceed In Forma Pauperis

Plaintiff's in forma pauperis application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

////

Leave to Amend

1
2 Plaintiff is cautioned that any amended complaint must identify as a defendant only
3 persons who personally participated in a substantial way in depriving him of his constitutional
4 rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the
5 deprivation of a constitutional right if he does an act, participates in another's act or omits to
6 perform an act he is legally required to do that causes the alleged deprivation). Plaintiff may also
7 include any allegations based on state law that are so closely related to his federal allegations that
8 "they form the same case or controversy." *See* 28 U.S.C. § 1367(a).

9 The amended complaint must also contain a caption including the names of all defendants.
10 Fed. R. Civ. P. 10(a).

11 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*
12 *George*, 507 F.3d at 607. Nor, as mentioned above, may he bring unrelated claims against
13 multiple defendants. *Id.*

14 Any amended complaint must be written or typed so that it so that it is complete in itself
15 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
16 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
17 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
18 F.3d 1467, 1474 (9th Cir. 1997) (the "'amended complaint supersedes the original, the latter
19 being treated thereafter as non-existent.'") (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
20 1967)).

21 Any amended complaint should be as concise as possible in fulfilling the above
22 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual
23 background which has no bearing on his legal claims. He should also take pains to ensure that his
24 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing
25 and organization. Plaintiff should carefully consider whether each of the defendants he names
26 actually had involvement in the constitutional violations he alleges. A "scattershot" approach in
27 which plaintiff names dozens of defendants will not be looked upon favorably by the court.

28 ////

1 Motion for Injunctive Relief

2 Plaintiff's motion for injunctive relief and request for assistance in preserving evidence
3 must be denied. To satisfy the standard for a preliminary injunction,² plaintiff must, at a
4 minimum, demonstrate that there is at least a fair chance of success on the merits. *Johnson v.*
5 *California State Board of Accountancy*, 72 F.3d 1427, 1430, 1433 (9th Cir. 1995); *Sports Form,*
6 *Inc. v. United Press International*, 686 F.2d 750, 753 (9th Cir. 1982). As discussed above, his
7 complaints must be dismissed and at present he has shown no likelihood of success on the merits
8 of any claim. Accordingly, plaintiff's motions must be denied.

9 Motion for Counsel

10 Plaintiff also requests the appointment of counsel. District courts may authorize the
11 appointment of counsel to represent an indigent civil litigant in certain exceptional circumstances.
12 See 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.1991); *Wood v.*
13 *Housewright*, 900 F.2d 1332, 1335–36 (9th Cir.1990); *Richards v. Harper*, 864 F.2d 85, 87 (9th
14 Cir. 1988). In considering whether exceptional circumstances exist, the court must evaluate (1)
15 the plaintiff's likelihood of success on the merits; and (2) the ability of the plaintiff to articulate
16 his claims pro se in light of the complexity of the legal issues involved. *Terrell*, 935 F.2d at
17 1017. The court cannot conclude that plaintiff's likelihood of success, the complexity of the
18 issues, or the degree of plaintiff's ability to articulate his claims amount to exceptional
19 circumstances justifying the appointment of counsel at this time.

20 Conclusion

21 Accordingly, it is ORDERED that:

- 22 1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is GRANTED.

23 ////

24 _____
25 ² A preliminary injunction represents the exercise of a far reaching power not to be
26 indulged except in a case clearly warranting it. *Dymo Indus. v. Tapeprinter, Inc.*, 326 F.2d 141,
27 143 (9th Cir.1964). The moving party must prove that he is likely to succeed on the merits, "that
28 he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the
public interest." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter v.*
Natural Res. Def. Council, Inc., 555 U.S. 7 (2008)).

1 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
2 in accordance with the notice to the California Department of Corrections and Rehabilitation filed
3 concurrently herewith.

4 3. Plaintiff's complaints (ECF Nos. 1 & 7) are dismissed with leave to amend within
5 30 days of service of this order. Failure to file an amended complaint that complies with this
6 order may result in the dismissal of this action for the reasons stated herein.

7 4. Plaintiff's motion for the appointment of counsel (ECF No. 11) is denied without
8 prejudice.

9 Further, IT IS RECOMMENDED that plaintiff's motion for injunctive relief (ECF No. 6)
10 and request for assistance in preserving evidence (ECF No. 8) be denied.

11 These findings and recommendations are submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
13 after being served with these findings and recommendations, any party may file written
14 objections with the court and serve a copy on all parties. Such a document should be captioned
15 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
16 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
17 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

18 Dated: October 8, 2019.

19 
20 EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE
22
23
24
25
26
27
28