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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW JESSE HERNANDEZ, SR.,
Plaintiff,
v.
BRIAN KIBLER, *et al.*,
Defendants.

Case No. 2:21-cv-01629-WBS-JDP (PC)
SCREENING ORDER THAT PLAINTIFF:

(1) PROCEED ONLY WITH HIS
EIGHTH AMENDMENT AND ADA
CLAIMS AGAINST DEFENDANTS
SPEARMAN, GRAY, AND
MIRANDA; OR

(2) DELAY SERVING ANY
DEFENDANT AND FILE AN
AMENDED COMPLAINT

ECF No. 15
THIRTY-DAY DEADLINE

Plaintiff, a state prisoner proceeding without counsel, alleges that defendants Kibler, Spearman, Gray, and Miranda violated his Eighth Amendment rights by discontinuing various medical appliances that had previously been prescribed for his disability. ECF No. 15 at 4. He also alleges that the discontinuation of these devices violated his equal protection rights. *Id.* at 7-8. Plaintiff’s Eighth Amendment and Americans with Disabilities Act (“ADA”) claims against defendants Spearman, Gray, and Miranda are viable. He must choose whether to proceed only with those claims or delay serving any defendant and file another amended complaint.

1 **II. Analysis**

2 Plaintiff alleges that in 2019 he was transferred from the California Medical Facility
3 (“CMF”) to High Desert State Prison (“HDSP”), where defendant Spearman was warden. ECF
4 No. 15 at 3. While at CMF he had been prescribed various medical devices for his disabilities,
5 including a C-PAP machine, a wheelchair backpack to carry incontinence supplies, a TENS unit,
6 and a hearing device. *Id.* at 3-4. Plaintiff claims that, upon arrival at HDSP, defendant Spearman
7 ordered medical staff, including defendants Gray and Miranda, to confiscate these items. *Id.* at 3.
8 They obliged, and plaintiff alleges that these confiscations caused him increased pain and
9 worsened his disabilities. *Id.* at 4. These allegations are sufficient, for screening purposes, to
10 state viable Eighth Amendment and ADA claims against defendants Spearman, Gray, and
11 Miranda.

12 Plaintiff has failed, however, to state a viable claim against defendant Kibler. He alleges
13 that this defendant was warden of HDSP from 2021 to 2022 and that he supported Spearman’s
14 order to confiscate plaintiff’s medical devices. *See, e.g., id.* at 3 (“By defendants Spearman and
15 Kibler I was deliberately deprived of my medical D.M.E’s . . .”). Unlike the allegations against
16 Spearman, which offer both a timeframe and an alleged justification for the confiscation, plaintiff
17 never describes the nature of Kibler’s actions. Merely mentioning this defendant’s name
18 alongside the other defendants is insufficient to state a claim against him.

19 I also find that plaintiff’s equal protection claim is non-cognizable. He alleges that the
20 confiscation of his medical devices denied him equal protection under the law. *Id.* at 7. The
21 disabled, however, are not a protected class under the Fourteenth Amendment. *Gamble v.*
22 *Escondido*, 104 F.3d 300, 307 (9th Cir. 1996).

23 Plaintiff may either proceed only with his Eighth Amendment and ADA claims against
24 defendants Spearman, Gray, and Miranda, or he may delay serving any defendant and file an
25 amended complaint. If plaintiff decides to file an amended complaint, the amended complaint
26 will supersede the current complaint. *See Lacey v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th
27 Cir. 2012) (en banc). This means that the amended complaint will need to be complete on its face
28 without reference to the prior pleading. *See* E.D. Cal. Local Rule 220. Once an amended

1 complaint is filed, the current complaint no longer serves any function. Therefore, in an amended
2 complaint, as in an original complaint, plaintiff will need to assert each claim and allege each
3 defendant's involvement in sufficient detail. The amended complaint should be titled "Second
4 Amended Complaint" and refer to the appropriate case number.

5 Accordingly, it is ORDERED that:

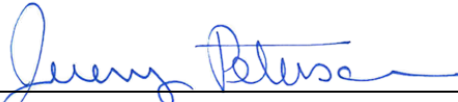
6 1. Within thirty days from the service of this order, plaintiff either advise that he wishes
7 to proceed only with his Eighth Amendment and ADA claims against defendants Spearman,
8 Gray, and Miranda or file an amended complaint. If he elects to proceed only on these claims, he
9 must voluntarily dismiss his claims against the other defendants.

10 2. Failure to comply with this order may result in the dismissal of this action.

11 3. The Clerk of Court is directed to send plaintiff a complaint form.

12
13 IT IS SO ORDERED.

14 Dated: September 16, 2022

15 
16 JEREMY D. PETERSON
17 UNITED STATES MAGISTRATE JUDGE

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