

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 JAMES EBERLE,

No. C 09-01865 SBA (PR)

4 Plaintiff,

**ORDER OF DISMISSAL WITHOUT  
PREJUDICE**

5 v.

6 JOHN DOE,

7 Defendant.  
8 \_\_\_\_\_/

9 This case was opened when Plaintiff sent the Court a document captioned "Motion for  
10 Sanctions by State Prisoner/Plata Class Member." The caption did not list any named Defendants or  
11 a case number. In an effort to protect Plaintiff's rights, the document was treated as an attempt to  
12 open a new case. Therefore, as mentioned above, this civil rights action was opened. Thereafter,  
13 Plaintiff filed an application for in forma pauperis status.

14 Plaintiff contends that "corrective actions" need to be ordered because of unconstitutional  
15 conditions created by overcrowding. These issues are currently being considered in the class action  
16 Plata v. Schwarzenegger, Case No. C 01-1351 TEH. Individual suits for injunctive and equitable  
17 relief from alleged unconstitutional prison conditions cannot be brought where there is a pending  
18 class action suit involving the same subject matter. McNeil v. Guthrie, 945 F.2d 1163, 1165 (10th  
19 Cir. 1991); Gillespie v. Crawford, 858 F.2d 1101, 1103 (5th Cir. 1988) (en banc). "Individual  
20 members of the class and other prisoners may assert any equitable or declaratory claims they have,  
21 but they must do so by urging further actions through the class representative and attorney, including  
22 contempt proceedings, or by intervention in the class action." Id. Therefore, the injunctive relief  
23 claims in this case are DISMISSED.

24 Plaintiff also requests the Court to order "sanctions in this matter" and "monetary awards."  
25 However, Plaintiff cannot be awarded monetary damages under §1983 by simply alleging that prison  
26 officials "violated the terms of the 'Plata Remedial Order.'" Under §1983, Plaintiff can only be  
27 awarded monetary damages for violations of the Constitution or federal laws, and the "Plata  
28 Remedial Order" is neither. Court decrees or orders do not create "rights, privileges or immunities

1 secured by the Constitution and laws" of the United States. Green v. McKaskle, 788 F.2d 1116,  
2 1123-24 (5th Cir. 1986) (quoting § 1983) (remedial decrees are means by which unconstitutional  
3 conditions are corrected but do not create or enlarge constitutional rights); see also DeGidio v. Pung,  
4 920 F.2d 525, 534-35 (8th Cir. 1990). Thus, a civil rights action cannot be used to enforce a  
5 remedial decree. Cagle v. Sutherland, 334 F.3d 980, 986-87 (11th Cir. 2003); Klein v. Zavaras, 80  
6 F.3d 432, 435 (10th Cir. 1996). Therefore, Plaintiff's claims related to Defendants violating the  
7 terms of the "Plata Remedial Order" are DISMISSED.

8 **CONCLUSION**

9 For the reasons set out above, this case is DISMISSED without prejudice. The Court has  
10 rendered its final decision on this matter; therefore, this Order TERMINATES Plaintiff's case.

11 Leave to proceed in forma pauperis is GRANTED (docket no. 3). The Clerk of the Court  
12 shall terminate all pending motions and close the file.<sup>1</sup>

13 IT IS SO ORDERED.

14 DATED: 11/16/09

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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<sup>1</sup> Counsel for the Plaintiff class in Plata is: Donald H. Specter, Prison Law Office, General  
Delivery, San Quentin, CA 94964.