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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JAMES E. ROJO,
CDCR #J-53355,

Plaintiff,

vs.

D. PARAMO, Warden; A. HERNANDEZ,
Deputy Warden; Mr. BEARD, Secretary
CDCR; JONES, Correctional Officer;
SMITH, Correctional Officer;
Dr. M. GARIKAPARTHI,

Defendants.

Civil No. 13cv2237 LAB (BGS)

ORDER:

**1) DISMISSING SECOND
AMENDED COMPLAINT
FOR FAILING TO STATE
A CLAIM PURSUANT
TO 28 U.S.C. § 1915(e)(2)(B)
AND § 1915A(b)(1)**

(ECF Doc. No. 15)

AND

**2) DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

(ECF Doc. No. 20)

I. Procedural History

On May 8, 2013, James E. Rojo ("Plaintiff"), a state prisoner currently incarcerated at the Richard J. Donovan Correctional Facility ("RJD") in San Diego, California and proceeding pro se, initiated this civil action pursuant to 42 U.S.C. § 1983 in the Northern District of California.

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1 On September 17, 2013, United States District Judge William H. Orrick
2 determined that Plaintiff's claims arose at RJD; therefore, venue was proper in the
3 Southern District of California and the matter was transferred here pursuant to 28 U.S.C.
4 §§ 84(d), 1391(b) and 1406(a) (ECF Doc. No. 8). Judge Orrick did not rule on Plaintiff's
5 Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a), nor did
6 he screen Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(e)(2) or § 1915A prior to
7 transfer.

8 On October 25, 2013, this Court granted Plaintiff's Motion to Proceed IFP, but
9 simultaneously dismissed his Complaint for failing to state a claim upon which relief
10 could be granted pursuant to 28 U.S.C. § 1915(e)(2) & 1915A(b) (ECF Doc. No. 11).
11 Specifically, the Court dismissed Plaintiff's claims against RJD on Eleventh Amendment
12 grounds, *id.* at 5, dismissed his claims against the Director/Secretary of the CDCR and
13 RJD Wardens Paramo and Hernandez because Plaintiff failed to allege any
14 individualized wrongdoing on their parts, *id.* at 5-6, dismissed his allegations of verbal
15 harassment on the part of Correctional Officers Smith and Jones because he failed to
16 allege facts which might give rise to an Eighth Amendment violation, *id.* at 6, and
17 dismissed Plaintiff's vague mention of "being denied medical treatment" and deprived
18 of his property because his Complaint contained only "naked assertions" and no "further
19 factual enhancement" sufficient to state a plausible claim for relief under either the
20 Eighth or Fourteenth Amendments. *Id.* at 7-8. Plaintiff was granted leave to file an
21 Amended Complaint in order to correct the deficiencies identified in the Court's Order.
22 *Id.* at 8-9.

23 Plaintiff filed a First Amended Complaint ("FAC") (ECF Doc. No. 13), but it too
24 was dismissed sua sponte for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2)
25 and § 1915A(b) (ECF Doc. No. 14). Because Plaintiff's FAC continued to name RJD,
26 its Wardens, and the Secretary of the CDCR as Defendants, and continued to suffer from
27 the same pleading problems noted in the Court's October 25, 2013 Order, it was
28 dismissed for failing to state a claim upon which relief can be granted. *Id.* at 7. To the

1 extent Plaintiff appeared, for the first time, to specifically challenge the validity of a
2 three-month stint in Administrative Segregation, however, he was advised of the
3 pleading requirements necessary to show a liberty interest under the Fourteenth
4 Amendment and *Sandin v. Conner*, 515 U.S. 472, 481-84 (1995), and provided another
5 opportunity to amend. *Id.* at 5-7.

6 On May 16, 2014, Plaintiff filed his Second Amended Complaint (“SAC”) (ECF
7 Doc. No. 15), which re-names all previously named parties except RJD,¹ and adds an
8 additional defendant, Dr. M. Garikaparathi. *See* SAC at 1, 2. Two weeks later, on May
9 30, 2014, Plaintiff also submitted a Motion for Preliminary Injunction (ECF Doc. No.
10 20).

11 **II. Sua Sponte Screening Pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

12 **A. Standard of Review**

13 As Plaintiff is now well aware, the Court is obligated by the Prison Litigation
14 Reform Act (“PLRA”) to review complaints filed by all persons proceeding IFP and by
15 those, like Plaintiff, who are “incarcerated or detained in any facility [and] accused of,
16 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
17 conditions of parole, probation, pretrial release, or diversionary program,” “as soon as
18 practicable after docketing.” *See* 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under the
19 PLRA, the Court must sua sponte dismiss complaints, or any portions thereof, which are
20 frivolous, malicious, fail to state a claim, or which seek damages from defendants who
21 are immune. *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122,
22 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002,
23 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

24 All complaints must contain “a short and plain statement of the claim showing that
25 the pleader is entitled to relief.” FED.R.CIV.P. 8(a)(2). Detailed factual allegations are

26
27 ¹ Because Plaintiff has never sufficiently stated a claim against RJD, and no longer
28 includes RJD in his SAC as a Defendant, all purported claims against RJD are
considered waived. *See King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (“All causes
of action alleged in an original complaint which are not alleged on an amended
complaint are waived.”).

1 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
2 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
3 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “Determining
4 whether a complaint states a plausible claim for relief [is] . . . a context-specific task that
5 requires the reviewing court to draw on its judicial experience and common sense.” *Id.*
6 The “mere possibility of misconduct” falls short of meeting this plausibility standard.
7 *Id.*

8 “When there are well-pleaded factual allegations, a court should assume their
9 veracity, and then determine whether they plausibly give rise to an entitlement to relief.”
10 *Iqbal*, 556 U.S. at 679; *see also Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000)
11 (“[W]hen determining whether a complaint states a claim, a court must accept as true all
12 allegations of material fact and must construe those facts in the light most favorable to
13 the plaintiff.”); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that
14 § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”).

15 However, while the court “ha[s] an obligation where the petitioner is pro se,
16 particularly in civil rights cases, to construe the pleadings liberally and to afford the
17 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
18 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not, in
19 so doing, “supply essential elements of claims that were not initially pled.” *Ivey v. Board*
20 *of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). “Vague and
21 conclusory allegations of official participation in civil rights violations are not sufficient
22 to withstand a motion to dismiss.” *Id.*

23 **B. Plaintiff’s Second Amended Complaint**

24 Plaintiff’s Second Amended Complaint suffers from many of same deficiencies
25 of pleading noted by the Court in its two previous Orders. For example, Plaintiff
26 continues to sue CDCR Secretary Beard and RJD Warden Paramo based solely on their
27 positions within the CDCR and RJD, and their “responsibil[ity] for . . . operations”
28 within the “California Prison system” and RJD. *See SAC* at 1-2, ¶¶ 2, 4. Because

1 Plaintiff has previously been informed that he “must plead that each government-official
2 defendant,” through his “own individual actions, has violated the Constitution,” and not
3 rely on a theory of respondeat superior liability to state a claim under § 1983, *see* Oct.
4 25, 2013 Order at 5-6; April 23, 2014 Order at 4-5 (citing *Iqbal*, 556 U.S. at 676), the
5 Court dismisses Plaintiff’s Second Amended Complaint for failing to state a claim
6 against Defendants Beard and Paramo pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b)
7 and without further leave to amend. *See AE ex rel. Hernandez v. County of Tulare*, 666
8 F.3d 631, 636 (9th Cir. 2011) (noting district court’s discretion to deny leave to amend
9 when “amendment would be futile or the plaintiff has failed to cure the complaint’s
10 deficiencies despite repeated opportunities.”).

11 To the extent Plaintiff claims Associate Warden Hernandez “placed [him] in . . .
12 administrative segregation,” despite being aware that his “lock-up” was unwarranted, *see*
13 SAC at 2, ¶ 3, but does not further allege any facts related to the conditions or duration
14 of his segregation sufficient to show “the type of atypical, significant deprivation [that]
15 might conceivable create a liberty interest” sufficient to justify due process protection
16 under the Fourteenth Amendment, *see* April 23, 2014 Order (quoting *Sandin*, 515 U.S.
17 at 486), his Second Amended Complaint must also be dismissed for failing to state a
18 claim pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Because Plaintiff has
19 previously been notified of this pleading deficiency, but has failed to correct it, the Court
20 also finds further leave to amend this claim would also be futile. *AE ex rel. Hernandez*,
21 666 F.3d at 636.

22 To the extent Plaintiff again claims Correctional Officers Smith and Jones are
23 alleged to have “inform[ed] other inmates” of Plaintiff’s “past record,” and to have
24 violated his “privacy” by “telling others that [Plaintiff] is not a good person,” *see* SAC
25 at 4-5, the Court again finds these allegations, without more, remain insufficient to show
26 the cruel and unusual punishment which is proscribed by the Eighth Amendment. *See*
27 Oct. 25, 2013 Order at 6 (citing *Keenan v. Hall*, 83 F.3d 1083, 1092 (9th Cir. 1996)); *see*
28 *also Seaton v. Mayberg*, 610 F.3d 530, 534 (9th Cir. 2010) (noting that “the loss of

1 privacy is an ‘inherent incident[] of confinement.’”) (quoting *Bell v. Wolfish*, 441 U.S.
2 520, 537 (1979)). Because Plaintiff has also been notified of this pleading deficiency
3 before, yet has failed to correct it, further leave to amend this claim is denied. *AE ex rel.*
4 *Hernandez*, 666 F.3d at 636.

5 As to the sole remaining, and newly added Defendant, Dr. Garikaparathi, Plaintiff
6 claims he “threatened” to “stop all his medications and let Plaintiff die,” on an
7 unspecified date after he “became upset when Plaintiff refused to take seizure
8 medications.” SAC at 4. Plaintiff alleges to suffer from “multiple” medical issues,
9 including a “metal rod in [his] spine,” fibermyalgia [sic], neuropathy, diabe[tes], asthma,
10 [and] COPD.” *Id.* Plaintiff further claims Garikaparathi refused to “issue [him] any pain
11 medications,” in order to retaliate against him for having “filed a complaint to the
12 Medical Board,” and “a civil action” which he alleges is currently “being litigated in the
13 Northern District of California.” *Id.*

14 As Plaintiff was advised in the Court’s October 25, 2013 Order, to the extent he
15 seeks to hold Dr. Garikaparathi, or any prison official liable under § 1983 for denying him
16 adequate medical care, he must allege both a “serious medical need,” and “deliberate
17 indifference” to that need. *See* Oct. 25, 2013 Order at 7 (citing *Estelle v. Gamble*, 429
18 U.S. 97, 105 (1976)). While Plaintiff now claims to suffer from several conditions which
19 the Court will presume are sufficiently serious to satisfy *Estelle*’s objective requirements,
20 *see e.g.*, *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992) (finding the
21 “existence of an injury that a reasonable doctor or patient would find important and
22 worthy of comment or treatment; the presence of a medical condition that significantly
23 affects an individual’s daily activities; or the existence of chronic and substantial pain”
24 sufficient “indications that a prisoner has a ‘serious’ need for medical treatment.”),
25 *overrruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir.
26 1997) (en banc), his claim that Garikaparathi threatened to terminate an unspecified type
27 of medication after he admits he refused to comply with Garikaparathi’s previously
28 prescribed course of treatment are insufficient, without more, to show either that

1 Garikaparathi “purposeful[ly] act[ed] or fail[ed] to respond” to Plaintiff’s serious medical
2 needs or that he was harmed as a result. *See Jett v. Penner*, 439 F.3d 1091, 1096 (9th
3 Cir. 2010). The Eighth Amendment does not require that Plaintiff receive “unqualified
4 access to health care,” *Hudson v. McMillian*, 503 U.S. 1, 9 (1992), nor does it entitle to
5 him to the treatment he wants. *Tolbert v. Eyman*, 434 F.2d 625, 626 (9th Cir. 1970).
6 Indeed, a difference of opinion between Plaintiff and his doctor as to which medications
7 are appropriate for his conditions, is not sufficient to support claim of deliberate
8 indifference. *See Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981); *see also*
9 *Snipes v. DeTella*, 95 F.3d 586, 591 (7th Cir. 1996) (failure to provide local anesthetic
10 for pain does not suffice for an Eighth Amendment claim); *Jackson v. Multnomah*
11 *County*, 2013 WL 428456 at *4 (D. Or. Feb. 4, 2013) (providing Tylenol instead of
12 narcotic pain medication is not a basis for an Eighth Amendment claim); *Salvatierra v.*
13 *Connolly*, 2010 WL 5480756 at *20 (S.D.N.Y. Sept. 1, 2010) (providing ibuprofen
14 instead of Percocet does not deprive an inmate of one of life’s necessities); *Fields v.*
15 *Roberts*, 2010 WL 1407679 at *4 (E.D. Cal. April 7, 2010) (refusing to prescribe
16 narcotic pain medication even when an outside doctor recommended it is a difference in
17 medical opinion on the proper course of treatment and is not a basis for an Eighth
18 Amendment claim). Because Plaintiff has been advised of the requirements for pleading
19 an inadequate medical care claim, *see* Oct. 25, 2013 Order at 7, and has still failed to
20 adequately plead such a claim, further leave to amend is denied. *AE ex rel. Hernandez*,
21 666 F.3d at 636.

22 Finally, Plaintiff’s SAC includes claims of retaliation by Dr. Garikaparathi, who is
23 alleged to have “directed other doctors not to issue Plaintiff any pain medications . . . in
24 retaliation for [Plaintiff’s] writing to the medical board, and [for] [a] civil action being
25 litigated in the Northern [D]istrict.” SAC at 4.

26 “Within the prison context, a viable claim of First Amendment retaliation entails
27 five basic elements: (1) an assertion that a state actor took some adverse action against
28 an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4)

1 chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not
2 reasonably advance a legitimate correctional goal.” *Rhodes v. Robinson*, 408 F.3d 559,
3 567-68 (9th Cir. 2005) (footnote omitted).

4 Retaliation is not established simply by showing adverse activity by a defendant
5 after protected speech; rather, Plaintiff must allege sufficient facts to plausibly suggest
6 a nexus between the two. *See Huskey v. City of San Jose*, 204 F.3d 893, 899 (9th Cir.
7 2000) (retaliation claim cannot rest on the logical fallacy of post hoc, ergo propter hoc,
8 *i.e.*, “after this, therefore because of this”). Thus, while “the timing and nature” of an
9 allegedly adverse action can “properly be considered” as circumstantial evidence of
10 retaliatory intent, the official alleged to have retaliated must also be alleged to have been
11 *aware* of the plaintiff’s protected conduct. *See Sorrano’s Gasco, Inc. v. Morgan*, 874
12 F.2d 1310, 1315-16 (9th Cir. 1989); *Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir. 1995);
13 *Wood v. Yordy*, __ F.3d __, 2014 WL 2462575 at *4 (9th Cir. June 3, 2014) (No. 12-
14 35336) (noting that “mere speculation that defendants acted out of retaliation is not
15 sufficient” and affirming summary judgment where there was “nothing in the record to
16 indicate [defendant] even knew about [an] earlier [law]suit.”).

17 As currently pleaded, the Court finds Plaintiff’s claims of retaliation fail to state
18 a plausible claim for relief because they are based on an unsupported assumption that Dr.
19 Garikaparathi *knew* about Plaintiff’s alleged complaint to the medical board or his
20 pending civil suit in the Northern District of California. *Sorrano’s Gasco*, 874 F.2d at
21 1315-16; *Wood*, 2014 WL 2462575 at *4; *see also Coreno v. Gamboa*, 2011 WL
22 6334351 at *7 (N.D. Cal. 2011) (unpub.) (finding that while prisoner’s allegations that
23 doctor reduced narcotic pain medication in retaliation for his inmate grievances and
24 complaint to the California Medical Board were sufficient to show prisoner had engaged
25 in protected conduct, his retaliation claim failed because he did not show doctor “was
26 aware of such conduct at the time.”).

27 In addition, while Plaintiff has failed to identify the civil action he alleges forms
28 the basis of Garikaparathi’s allegedly retaliatory animus, the Court takes judicial notice

1 of *Rojo v. Bright*, N. D. Cal. Civil Case No. 3:12-cv-0215-VC, in which Plaintiff alleges
2 various inadequate medical care claims against doctors at Soledad State Prison related
3 to the deprivation of a walker and pain medication similar to the ones he raises in this
4 action. *See Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (court ““may take
5 notice of proceedings in other courts, both within and without the federal judicial system,
6 if those proceedings have a direct relation to matters at issue.””) (quoting *Bennett v.*
7 *Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)). However, Dr. Garikaparathi is
8 not a named defendant in Plaintiff’s pending Northern District case; and Plaintiff’s SAC
9 in this action contains no allegations to suggest Garikaparathi, a doctor at RJD, even knew
10 about it, let alone took any adverse action against Plaintiff because of, another civil
11 action he filed two years before arising at a separate correctional facility against different
12 doctors. *Wood*, 2014 WL 2462575 at *4; *Sorrano’s Gasco*, 874 F.2d at 1314 (plaintiff’s
13 protected conduct must be alleged to be the “substantial” or “motivating” factor in
14 defendant’s decision to act).

15 Finally, Plaintiff’s SAC further fails to allege his First Amendment rights were in
16 any way “chilled” by Garikaparathi’s behavior; nor does he claim Garikaparathi’s actions
17 failed to “advance a legitimate goal.” *See Rhodes*, 408 F.3d at 568 n.11 (alleged adverse
18 action must be of the type to silence a person of ordinary firmness); *Barnett v. Centoni*,
19 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam) (retaliatory action must be alleged to
20 have “advanced no legitimate penological interest.”).

21 Thus, for all these reasons, the Court finds Plaintiff’s SAC also fails to state a
22 retaliation claim against Dr. Garikaparathi upon which relief can be granted, and therefore
23 it must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Because
24 Plaintiff has not yet been provided an opportunity to amend this claim, however, the
25 Court will grant him one final opportunity to amend *this* claim against *this* Defendant
26 only. *See Franklin v. Murphy*, 745 F.2d 1221, 1228 n.9 (9th Cir. 1984) (“Pro se
27 plaintiffs proceeding IFP must also be given an opportunity to amend their complaint

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1 unless it is absolutely clear that the deficiencies of the complaint could not be cured by
2 amendment.”) (internal quotations omitted).

3 **III. Plaintiff’s Motion for Preliminary Injunction**

4 Plaintiff has also submitted a Motion for a “Preliminary/Permanent Injunction”
5 pursuant to FED.R.CIV.P. 65 (ECF Doc. No. 20).

6 In his Motion, Plaintiff claims another doctor at RJD named Karan has been
7 “lacking in medical treatment,” and is “constantly trying to put [him] on psychotropic
8 meds.” *Id.* at 1. Plaintiff further claims Defendant Hernandez “is now the ADA
9 coordinator” but has done nothing to fix his walker which is “on it’s last legs.” *Id.* at 2.
10 Finally, Plaintiff requests that “an order be made that C/O F. Lewis be made to
11 administer only to custody matters and stop trying to exert his authority when it comes
12 to medical things.” *Id.*

13 “A preliminary injunction is an extraordinary remedy never awarded as of right.”
14 *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008) (citation
15 omitted). “The proper legal standard for preliminary injunctive relief requires a party to
16 demonstrate ‘that he is likely to succeed on the merits, that he is likely to suffer
17 irreparable harm in the absence of preliminary relief, that the balance of equities tips in
18 his favor, and that an injunction is in the public interest.’” *Stormans, Inc. v. Selecky*, 586
19 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20).

20 To show irreparable harm, the “plaintiff must show that he is under threat of
21 suffering ‘injury in fact’ that is concrete and particularized; the threat must be actual and
22 imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged
23 action of the defendant; and it must be likely that a favorable judicial decision will
24 prevent or redress the injury.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009)
25 (citing *Friends of Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.*, 528 U.S. 167,
26 180-181 (2000)). In sum, an injunction “may only be awarded upon a clear showing that
27 the plaintiff is entitled to relief.” *Winter*, 555 U.S. at 22.

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1 In this case, Plaintiff's Motion for Preliminary Injunction must be denied for the
2 same reasons his SAC must be dismissed. In other words, because Plaintiff has failed
3 to state a claim against any named Defendant, he necessarily has not shown that he is
4 "likely to succeed on the merits" of any claim, that "the balance of equities tips in his
5 favor," or that the issuance of an injunction in his case would serve the public interest.
6 *Winter*, 555 U.S. at 20.

7 In addition, an injunction "binds only the following who receive actual notice of it by
8 personal service or otherwise: (A) the parties; (B) the parties' officers, agents, servants,
9 employees, and attorneys; and (C) other persons who are in active concert or participation with
10 [them]." FED.R.CIV.P. 65(d)(2). In general, "[a] federal court may issue an injunction if it has
11 personal jurisdiction over the parties and subject matter jurisdiction over the claim; it may not
12 attempt to determine the rights of persons not before the court." *Zepeda v. INS*, 753 F.2d 719,
13 727 (9th Cir. 1985). One "becomes a party officially, and is required to take action in that
14 capacity, only upon service of summons or other authority-asserting measure stating the time
15 within which the party served must appear to defend." *Murphy Bros., Inc. v. Michetti Pipe*
16 *Stringing, Inc.*, 526 U.S. 344, 350 (1999); *see also Hitchman Coal & Coke Co. v. Mitchell*, 245
17 U.S. 229, 234-35 (1916).

18 Thus, even if Plaintiff could satisfy all the *Winter* factors justifying extraordinary
19 injunctive relief under Rule 65, at this stage of the proceedings, the Court simply lacks
20 jurisdiction over *any* of the parties Plaintiff seeks to enjoin, especially Dr. Karan and C/O F.
21 Lewis who are not, and never have been, named as parties in this case. *Zepeda*, 753 F.2d at
22 727-28.

23 **IV. Conclusion and Order**

24 For the reasons set forth above, IT IS HEREBY ORDERED that:

25 1) Plaintiff's Motion for Preliminary Injunction (ECF Doc. No. 20) is DENIED.

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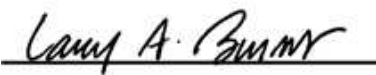
27 2) Plaintiff's Second Amended Complaint (ECF Doc. No. 15) is DISMISSED for
28 failing to state a claim upon which relief may be granted *without leave to amend* as to all claims

1 alleged against Defendants R.J. Donovan State Prison, D. Paramo, Warden, A. or Alan
2 Hernandez, Deputy Warden, J. Beard, Director/Secretary of the CDCR, D. Jones, and D. Smith,
3 Correctional Officers, and as to Plaintiff's inadequate medical treatment claims against Dr. M.
4 Garikaparathi. *See* 28 U.S.C. § 1915(e)(2) & § 1915A(b); *Lopez*, 203 F.3d at 1126-27; *Rhodes*,
5 621 F.3d at 1004.

6 3) Plaintiff's Second Amended Complaint (ECF Doc. No. 15) is further DISMISSED
7 for failing to state a retaliation claim against Dr. Garikaparathi pursuant to 28 U.S.C. § 1915(e)(2)
8 and § 1915A(b), but with leave to amend.

9 4) Plaintiff is GRANTED forty-five (45) days leave in which to file a Third Amended
10 Complaint which cures all the deficiencies of pleading noted in this Order as to his claims of
11 retaliation against Dr. M. Garikaparathi only. Plaintiff may not include additional claims against
12 Garikaparathi or any other party and may not add new parties. Should Plaintiff fail to file a Third
13 Amended Complaint within the time provided, or should he file a Third Amended Complaint
14 that fails to adhere to the directions set forth in this Order, his entire action shall be dismissed
15 without further leave to amend for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and
16 § 1915A(b).²

17
18 DATED: June 10, 2014

19 
20 **HONORABLE LARRY ALAN BURNS**
21 United States District Judge

22
23
24 ² Plaintiff is cautioned that such a dismissal may count as a "strike" against him.
25 *See* 28 U.S.C. § 1915(g); *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005).
26 "Pursuant to § 1915(g), a prisoner with three strikes or more cannot proceed IFP." *Id.*;
27 *see also Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (under the PLRA,
28 "[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred from
IFP status under the three strikes rule[.]"). A cursory review of Plaintiff's litigation
history on PACER and Westlaw reveals numerous other civil actions filed by Plaintiff
over the years, with at least one of them clearly qualifying as a strike under § 1915(g).
See Rojo v. Bonnhien, et al., C. D. Cal., Western Div. Civil Case No. 2:09-cv-02762-R-
MLG, 2009 WL 1972068 at *2-3 (July 6, 2009) (Order dismissing Amended Complaint
for failing to state a claim pursuant to FED.R.CIV.P. 12(b)(6) without leave to amend).