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IN THE UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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SACRAMENTO DIVISION

14

<p>15 KEVIN JACKSON, an individual; individually and on behalf of all others similarly situated,</p>	<p>No. 08-1954 MCE-JFM</p>
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Plaintiffs,

**DEFENDANT’S NOTICE OF
MOTION AND MOTION
THAT THE COURT SCREEN
PLAINTIFF’S COMPLAINT
UNDER 28 U.S.C. § 1915A**

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v.

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ROBIN DEZEMBER, et al.,

Judge: The Honorable
Morrison C. England

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Defendants.

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TO PLAINTIFF AND HIS COUNSEL OF RECORD:

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PLEASE TAKE NOTICE that Defendant Dezimmer requests that this Court screen the

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Complaint under 28 U.S.C. § 1915A.

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I. Introduction and Procedural Background.

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Plaintiff is an inmate currently incarcerated at the California State Prison at Solano.

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(Compl. 1.) He alleges in this putative class action that state prisoners diagnosed with chronic

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hepatitis C, genotype 1, should be offered a liver biopsy every five years to determine whether

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further treatment with antiviral drugs is warranted. (Compl. 4.) Plaintiff further alleges that: (1)

1 he was diagnosed with chronic hepatitis C in 2000, (2) his liver biopsy in 2007 revealed Stage II
2 of the disease, and (3) his requests for treatment in accordance with medical recommendations
3 have been refused. (Compl. 5.) Plaintiff also alleges that Defendant Dezember, Director of the
4 Division of Correctional Health Care Services of the California Department of Corrections and
5 Rehabilitation, maintains a policy and practice of denying treatment for chronic hepatitis C until
6 an inmate's disease is advanced beyond Stage II in violation of his and others' rights under the
7 Eighth and Fourteenth Amendments to the United States Constitution. (Compl. 7.) Plaintiff's
8 complaint, however, must be dismissed because there is a certified pending class action before
9 the United States District Court for the Northern District of California involving the same subject
10 matter.

11 Plaintiff initially filed his complaint in the United States District Court for the Central
12 District of California, on July 8, 2008. The complaint was personally served on Defendants on
13 August 6, 2008. On August 19, 2008, this matter was transferred to the Eastern District of
14 California, Sacramento Division.

15 **II. Defendant Requests that the Court Screen Plaintiff's Complaint Under 28 U.S.C.**
16 **§ 1915A.**

17 Under 28 U.S.C. § 1915A, "[t]he court shall review, before docketing, if feasible, or in any
18 event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner
19 seeks redress from a governmental entity or officer or employee of a governmental entity." Upon
20 such review, the Court shall identify cognizable claims or dismiss any or all portions of the
21 complaint if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may
22 be granted." 28 U.S.C. § 1915A(b).

23 Thus, Defendant requests that the Court screen Plaintiff's complaint and dismiss it.

24 **III. Plaintiff's Complaint Must Be Dismissed Because His Equitable Claim Is Covered**
25 **Under an Existing Certified Class Action and Must be Made Through the Court-**
Appointed Receiver in *Plata*.

26 Suits for equitable relief from alleged unconstitutional prison conditions cannot be brought
27 where there is an existing class action within the same subject matter. *McNiel v. Guthrie*, 945
28 F.2d 1163, 1165 (10th Cir. 1991); *see also Green v. McKaskle*, 770 F.2d 445, 446-47 (5th Cir.

1 1985) (“[T]he individual class member should be barred from pursuing his own individual
2 lawsuit that seeks equitable relief within the subject matter of the class-action.”); *Muhammed v.*
3 *Schwarzenegger*, No. 06-0739 MHP (PR), 2006 WL 1883347, at *1 (N.D. Cal. July 7, 2006);
4 *Coyle v. Cambra*, No. 02-1810 SBA (PR), 2005 WL 2397517, at *13 (N.D. Cal. Sept. 27, 2005)
5 (“[An] action for equitable relief from alleged unconstitutional prison conditions cannot be
6 maintained where there is a pending class-action suit involving the same subject matter.”);
7 *Jacobson v. Schwarzenegger*, 357 F. Supp. 2d 1198, 1209 (C.D. Cal. 2004) (holding that a
8 district court may dismiss an individual plaintiff’s action where the plaintiff is a member of a
9 pending class action involving the same claims); *Acuna v. Cambra*, No. 95-2150 VRW, 1995
10 WL 607543, at *2 (N.D. Cal. Oct. 6, 1995) (“Individual lawsuits for injunctive and declaratory
11 relief may not be brought if there is a class action pending involving the same subject matter.”).
12 The same principle applies to class actions. *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982)
13 (“[A] class member should not be able to prosecute a separate equitable action once his or her
14 class has been certified.”).

15 This is because “to allow individual suits would interfere with the orderly administration of
16 the class-action and risk inconsistent judgments.” *Gilispie v. Crawford*, 858 F.2d 1101, 1103
17 (5th Cir. 1998); *see also Goff*, 672 F.2d at 704 (“Two of the primary purposes of Fed. R. Civ. P.
18 23 are avoidance of both duplicative litigation and inconsistent judgments Both of these
19 policies are undermined when two suits challenging the same prison conditions are allowed to
20 proceed.”) Accordingly, a plaintiff who is a class member may assert any equitable or
21 declaratory claims he has, but must do so by either “urging further action through the class
22 representative . . . or by intervention into the class-action.” *Gilispe*, 858 F.2d at 1103; *McNiel*,
23 945 F. 2d at 1166; *Muhammed*, 2006 WL 1883347, at *1; *Coyle*, 2005 WL 2397517 at *13;
24 *Acuna*, 1995 WL 607543 at *2. Class members may bring an individual action for equitable
25 relief only if their claims are not being litigated within the boundaries of the class action, or they
26 seek money damages. *McNiel*, 945 F.2d at 1166 n.4.

27 In this matter, Plaintiff alleges in his complaint that his 2007 liver biopsy revealed Stage II
28 of chronic hepatitis C and his requests for treatment in accordance with certain medical

1 recommendations have been refused. (Compl. 5.) Plaintiff further alleges that Defendant
2 Dezimmer, Director of the Division of Correctional Health Care Services of the California
3 Department of Corrections and Rehabilitation, maintains a policy and practice of denying
4 treatment for chronic hepatitis C until an inmate's disease is advanced beyond Stage II in
5 violation of his and others' rights under the Eighth and Fourteenth Amendments to the United
6 States Constitution. (Compl. 7.) Plaintiff seeks only injunctive relief ordering Defendant to
7 cease subjecting Plaintiff and similarly situated individuals to the alleged policies and conditions
8 described in his complaint. (Compl. 9.)

9 These allegations and prayer for relief fall squarely within *Plata v. Schwarzenegger*, No. C-
10 01-1351 THE (N.D. Cal.), a certified class action pending before the United State District Court
11 for the Northern District of California, San Francisco Division, which concerns medical care for
12 all inmates in California and is now in the remedial phase of litigation. In their Stipulation for
13 Injunctive Relief, the parties in *Plata* stipulated that the *Plata* class "consists of all prisoners in
14 the custody of the CDC[R] with serious medical needs, except those incarcerated at Pelican Bay
15 State Prison." (Def.'s Req. Judicial Not., Ex. A: Stipulation Inj. Relief at 5, emphasis added.)
16 Because Plaintiff is a prisoner incarcerated at the California State Prison at Solano and is seeking
17 injunctive relief on behalf of himself and others with respect to his alleged serious medical
18 condition, his claims fall squarely within the ambit of the *Plata* class action.

19 Furthermore on June 30, 2005, the Court adjudicating the *Plata* class action ordered a
20 Receivership to take control of the delivery of medical services to all inmates under the custody
21 of the California Department of Corrections and Rehabilitation (CDCR) with the exception of
22 those incarcerated at Pelican Bay State Prison. (Def.'s Req. Judicial Not, Ex. B: Order
23 Appointing Receiver at 1.) In its Order Appointing Receiver, the Court declared that the
24 Receiver shall:

25 exercise all powers vested by the Secretary of the CDCR as they relate to the
26 administration, control, management, operation, and financing of the
27 California [Department of Corrections and Rehabilitation's] medical health
28 care system. The Secretary's exercise of the above powers is suspended for
 the duration of the Receivership (*Id.* at 4.)

28 In his prayer for relief, Plaintiff seeks to enjoin Defendant from further subjecting Plaintiff to the

1 allegedly inadequate medical treatment he has received. (Compl. 9.) Because the health-care
2 system that Defendant nominally supervises is under the control of the federal receiver appointed
3 in *Plata*, this action must be dismissed and Plaintiff must bring his claims before the Receiver.

4 **IV. Conclusion**

5 Defendant respectfully requests that this Court screen Plaintiff's complaint under 28 U.S.C.
6 § 1915A. Defendant further requests that this Court, upon screening, dismiss this case in its
7 entirety because the injunctive relief sought must be made through the court-appointed receiver.

8 Dated: August 26, 2008

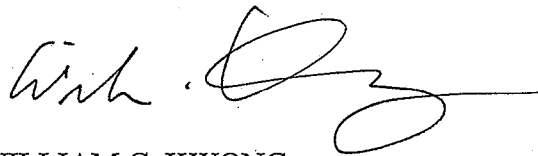
9 Respectfully submitted,

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