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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LON CARTER,

Plaintiff,

v.

WARDEN NICK DAWSON, et al.,

Defendants.

CASE NO. 1:07-cv-01325-OWW-SKO PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT PLAINTIFF’S
MOTION BE DENIED

(Doc. 67)

OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Lon Carter (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On August 9, 2010, Plaintiff filed a motion requesting a court order granting Plaintiff “Priority Legal Use” and law library access. (Doc. #67.) Plaintiff’s motion will be construed as a request for a preliminary injunction.

The purpose of a preliminary injunction is to preserve the status quo if the balance of equities so heavily favors the moving party that justice requires the court to intervene to secure the positions until the merits of the action are ultimately determined. University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). “A plaintiff seeking a preliminary injunction must establish that 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.” Winter v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 374 (2008).

“[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (quotations and citations omitted) (emphasis in original). A

1 party seeking a preliminary injunction simply cannot prevail when that motion is unsupported by
2 evidence. With respect to motions for preliminary injunctive relief or a temporary restraining order,
3 the Prison Litigation Reform Act (“PLRA”) provides that:

4 [i]n any civil action with respect to prison conditions, to the extent
5 otherwise authorized by law, the court may enter a temporary
6 restraining order or an order for preliminary injunctive relief.
7 Preliminary injunctive relief must be narrowly drawn, extend no
further than necessary to correct the harm the court finds requires
preliminary relief, and be the least intrusive means necessary to
correct that harm.

8 18 U.S.C. § 3626(a)(2).

9 Plaintiff’s motion does not contain any argument regarding whether he is likely to proceed
10 on the merits of this action, whether he is likely to suffer irreparable harm in the absence of
11 injunctive relief, whether the balance of equities tips in his favor, or whether the relief he seeks is
12 in the public’s interest. Further, Plaintiff has not demonstrated that the relief he seeks is narrowly
13 drawn, extends no further than necessary to correct the harm that requires relief, or that the relief
14 requested is the least intrusive means necessary to correct any harm. The Court will not interfere
15 with the administration of the prison unless Plaintiff can demonstrate these requirements.

16 Accordingly, it is HEREBY RECOMMENDED that Plaintiff’s request for preliminary
17 injunctive relief be DENIED.

18 These Findings and Recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
20 days after being served with these Findings and Recommendations, any party may file written
21 objections with the Court and serve a copy on all parties. Such a document should be captioned
22 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
23 shall be served and filed within ten (10) days after service of the objections. The parties are advised
24 that failure to file objections within the specified time may waive the right to appeal the District
25 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

26 IT IS SO ORDERED.

27 **Dated: February 4, 2011**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE