## 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA 9 10 11 GREGORY ELL SHEHEE, Case No.: 1:16-cv-00354-DAD-SAB (PC) 12 Plaintiff, FINDINGS AND RECOMMENDATIONS RECOMMENDING PLAINTIFF'S MOTION FOR 13 v. A COURT ORDER DIRECTING ACCESS TO **COPY SERVICES BE DENIED** 14 COSBY, et al., [ECF Nos. 34, 35] 15 Defendants. 16 Plaintiff Gregory Ell Shehee is appearing pro se and in forma pauperis in this civil rights action 17 pursuant to 42 U.S.C. § 1983. At the time the case was filed, Plaintiff was a civil detainee. Plaintiff 18 19 declined magistrate judge jurisdiction, and this matter was therefore referred to a United States 20 Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302. 21 Currently before the Court are Plaintiff's motions for access to photocopying services, filed November 14, 2016. Plaintiff requests that the Court issue an order directing that he have access to 22 23 photocopy services within the Fresno County Jail. 24 I. **DISCUSSION** 25 26 A preliminary injunction should not issue unless necessary to prevent threatened injury that 27 would impair the court's ability to grant effective relief in a pending action. "A preliminary injunction 28 ... is not a preliminary adjudication on the merits but rather a device for preserving the status quo and

<u>Lewis</u>, 518 U.S. at 351.

preventing the irreparable loss of right before judgment." Sierra On-Line, Inc. v. Phoenix Software. Inc., 739 F.2d 1415, 1422 (9th Cir. 1984). A preliminary injunction represents the exercise of a far reaching power not to be indulged except in a case clearly warranting it. Dymo Indus. V. Tapeprinter, Inc., 326 F.2d 141, 143 (9th Cir. 1964). "The proper legal standard for preliminary injunctive relief requires a party to demonstrate '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." Stormans, Inc., v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009), quoting Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008). In cases brought by prisoners involving conditions of confinement, any preliminary injunction "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 the harm." 18 U.S.C. § 3626(a)(2).

Inmates have a fundamental constitutional right of access to the courts. <u>Lewis v. Casey</u>, 518 U.S. 343, 346 (1996); <u>Silva v. Di Vittorio</u>, 658 F.3d 1090, 1101 (9th Cir. 2011); <u>Phillips v. Hust</u>, 588 F.3d 652, 655 (9th Cir. 2009). However, to state a viable claim for relief, Plaintiff must show that he suffered an actual injury, which requires "actual prejudice to contemplated or existing litigation." <u>Nevada Dep't of Corr. v. Greene</u>, 648 F.3d 1014, 1018 (9th Cir. 2011) (citing <u>Lewis</u>, 518 U.S. at 348) (internal quotation marks omitted); <u>Christopher v. Harbury</u>, 536 U.S. 403, 415 (2002); <u>Lewis</u>, 518 U.S. at 351; <u>Phillips</u>, 588 F.3d at 655.

A prisoner cannot submit conclusory declarations of injury by claiming his access to the courts has been impeded. Thus, it is not enough for an inmate to show some sort of denial of access without further elaboration. Plaintiff must demonstrate "actual injury" from the denial and/or delay of access. The Supreme Court has described the "actual injury" requirement:

[T]he inmate ... must go one step further and demonstrate that the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim. He might show, for example, that a complaint he prepared was dismissed for failure to satisfy some technical requirement which, because of deficiencies in the prison's legal assistance facilities, he could not have known. Or that he suffered arguably actionable harm that he wished to bring before the courts, but was so stymied by inadequacies of the law library that he was unable even to file a complaint.

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In this instance, Plaintiff has failed to allege or demonstrate "actual injury" by the failure of access to photocopy services. Thus, Plaintiff has failed to demonstrate that in the absence of preliminary injunctive relief he is likely to suffer actual injury in prosecuting his case. "Speculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction." Caribbean Marine Servs. Co. v. Baldridge, 844 F.2d 668, 674 (9th Cir. 1988), citing Goldies Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472 (9th Cir. 1984). Plaintiff has provided no basis for this court to interfere with the jail's administration of its access to photocopy services, and his requests for injunctive relief should be denied.

II.

## RECOMMENDATION

Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's motions for access to photocopy services be DENIED.

This Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty (30) days after being served with this Findings and Recommendation, the parties may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." The parties are advised that failure to file objections within the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing <u>Baxter v. Sullivan</u>, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: **December 1, 2016** 

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UNITED STATES MAGISTRATE JUDGE