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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY RAY BAKER,  
Plaintiff,  
v.  
J. MACOMBER, et al.,  
Defendants.

No. 2:15-cv-0248 GEB AC P

ORDER and  
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner presently incarcerated at California State Prison Sacramento (CSP-SAC), who proceeds pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Presently pending is plaintiff’s second motion for preliminary injunctive relief. See ECF No. 23. For the reasons that follow, this court recommends that plaintiff’s motion be denied.

This action proceeds on plaintiff’s original complaint against sole defendant Correctional Officer J. McCowan on plaintiff’s claims for excessive force and deliberate indifference to plaintiff’s serious medical needs. See ECF Nos. 1, 10. Plaintiff alleges that, on August 10, 2012, during his previous incarceration at CSP-SAC, defendant McCowan used excessive force when he cuffed plaintiff behind his back and raised his arms unnecessarily high, and at the same time deprived plaintiff of his scheduled insulin injection. McCowan answered the complaint, ECF No. 20, and the court issued a Discovery and Scheduling Order on January 4, 2016, ECF No. 21.

1 Plaintiff commenced this action when he was incarcerated at California State Prison Los  
2 Angeles County (CSP-LAC). ECF No. 1. Plaintiff was transferred back to CSP-SAC in late  
3 December 2015. ECF No. 22.

4 By order filed September 18, 2015, the court denied plaintiff's first motion for injunctive  
5 relief because it was too "wide-ranging." The court denied the motion without prejudice to  
6 plaintiff filing a new motion that "is specific as to any harm he has sustained and the reasons he  
7 believes he is at risk of further harm, and by whom." See ECF No. 10 at 12-3.

8 In his present motion, plaintiff seeks "an emergency court order to force defendants  
9 Warden Jeff Macomber and J. McCowan into compliance." ECF No. 23 at 1. Plaintiff seeks a  
10 "permanent temporary preliminary injunction TRO," immediate release of his legal materials  
11 following his transfer, and appointment of counsel. Id. at 4.

12 Plaintiff explains that he is in a "Psychiatric Services Unit (PSU) for the mentally ill,"  
13 where he has "been assaulted, denied my legal property access to the courts, medical, mental  
14 health treatment" (sic). ECF No. 23 at 1. Plaintiff states that, "I'm on a locked down program in  
15 a prison inside of a prison (PSU). I'm escorted everywhere in restraints no phone calls, law  
16 library access." Id. at 3. Plaintiff avers that "I was suicidle (sic) on 12/26/15 due to all of the  
17 denials I've experienced since my arrival here on 12/24/15." Id. Plaintiff explains, id. at 3 (sic):

18 I'm suicidle. I swallowed a razor on 12/26/2015 at 8:00 am. I'm  
19 high risk medical. I'm on a hunger strike. I'm a Type II insulin  
20 dependent diabetic with polyneuropathy, diabetic neuropathy. I've  
21 got vision acuity in my right eye (via) detached retina & macular  
degeneration due to an attempted murder by 8 officers at CSP-Los  
Angeles County Lancaster on August 121, 2015.

22 Plaintiff also asserts that, when he arrived back at CSP-SAC, he was poked "fairly hard"  
23 in the chest by an unknown officer because plaintiff had "written him up," and that Sgt.  
24 Williamson denied plaintiff his legal property on 12/26/15, telling plaintiff, "You're not getting  
25 your shit today." Id. at 2. Plaintiff complains that he doesn't have access to the law library or  
26 any legal forms, and that he was sent back to CSP-SAC for "officials to kill me as I'm in  
27 imminent danger and fear for my life." Id. Plaintiff alleges that the racism at CSP-SAC "is very  
28 apparent" and the correctional officers and senior management are "very bad." Id. at 3.

1           “A preliminary injunction is an ‘extraordinary and drastic remedy,’ 11A C. Wright, A.  
2 Miller, & M. Kane, Federal Practice and Procedure § 2948, p. 129 (2d ed.1995) [] (footnotes  
3 omitted); it is never awarded as of right, Yakus v. United States, 321 U.S. 414, 440 (1944).”  
4 Munaf v. Geren, 553 U.S. 674, 689-90 (2008). “The sole purpose of a preliminary injunction is  
5 to “preserve the status quo ante litem pending a determination of the action on the merits.” Sierra  
6 Forest Legacy v. Rey, 577 F.3d 1015, 1023 (9th Cir. 2009) (citing L.A. Memorial Coliseum  
7 Comm’n v. NFL, 634 F.2d 1197, 1200 (9th Cir.1980)); see also 11A Charles Alan Wright &  
8 Arthur R. Miller, Federal Practice and Procedure, § 2947 (2d ed. 2010)

9           In evaluating the merits of a motion for preliminary injunctive relief, the court considers  
10 whether the movant has shown that “he is likely to succeed on the merits, that he is likely to  
11 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his  
12 favor, and that an injunction is in the public interest.” Winter v. Natural Resources Defense  
13 Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009)  
14 (quoting Winter). The propriety of a request for injunctive relief hinges on a significant threat of  
15 irreparable injury that must be imminent in nature. Caribbean Marine Serv. Co. v. Baldrige, 844  
16 F.2d 668, 674 (9th Cir. 1988). A preliminary injunction is appropriate when a plaintiff  
17 demonstrates . . . “serious questions going to the merits and a hardship balance [] tips sharply  
18 toward the plaintiff, . . . assuming the other two elements of the Winter test are also met.”  
19 Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-32 (9th Cir. 2011). An injunction  
20 against individuals who are not parties to the action is strongly disfavored. Zenith Radio Corp. v.  
21 Hazeltine Research, Inc., 395 U.S. 100 (1969).

22           Additionally, in cases brought by prisoners involving conditions of confinement, any  
23 preliminary injunction “must be narrowly drawn, extend no further than necessary to correct the  
24 harm the court finds requires preliminary relief, and be the least intrusive means necessary to  
25 correct the harm.” 18 U.S.C. § 3626(a)(2).

26           Plaintiff’s instant motion is again too “wide-ranging,” addressing matters beyond the  
27 scope of this action. Plaintiff has not complied with the court’s instructions to identify the  
28 specific harm that he has sustained and/or the specific risk of future harm that he is seeking to

1 prevent. It is routine for legal property to lag behind a prisoner’s transfer to another institution.  
2 Additionally, although plaintiff generally asserts that he is being denied access to the courts (“I’ve  
3 got responses, 42 U.S.C. § 1983s, motions summary judgements, default motions, change of  
4 addresses motifications” (sic), ECF No. 23 at 4), he does not allege any “actual injury,” which is  
5 the threshold requirement for stating a denial of access claim. See Lewis v. Casey, 518 U.S. 343,  
6 351-53 (1996) (“actual injury” is “actual prejudice with respect to contemplated or existing  
7 litigation, such as the inability to meet a filing deadline or to present a claim”). Finally, the only  
8 non-self-inflicted injury alleged by plaintiff was a “poke in the chest.” These allegations fail to  
9 provide any ground for applying the four-factor analysis for considering a motion for preliminary  
10 injunctive relief. See Winter, supra, 555 U.S. at 20.

11 Plaintiff is admonished to refrain from filing repeated motions for injunctive relief.  
12 Plaintiff should not seek injunctive relief unless he can allege facts demonstrating the possibility  
13 of relevant and specific imminent harm that may be prevented by a narrowly tailored court order.  
14 Failure to abide by this warning may result in the imposition of sanctions. See Fed. R. Civ. P. 11.

15 Plaintiff’s request for appointment of legal counsel is similarly flawed. Plaintiff asserts  
16 that he requires the assistance of counsel because he “cannot comprise all of my evidence without  
17 my legal property.” ECF No. 23 at 3. Plaintiff fails to demonstrate the presence of  
18 exceptional circumstances warranting the appointment of counsel. See 28 U.S.C. § 1915(e)(1).  
19 “Exceptional circumstances” include plaintiff’s likelihood of success on the merits of his claims  
20 as well a demonstrated inability to pursue such claims in light of the complexity of the legal  
21 issues involved. See Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not  
22 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional  
23 circumstances is on the plaintiff. Circumstances common to most prisoners, such as lack of legal  
24 education and limited law library access, do not establish exceptional circumstances. Id. Because  
25 plaintiff has failed to demonstrate the requisite exceptional circumstances at this time, his request  
26 for appointment of counsel will be denied without prejudice.

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1           Accordingly, IT IS HEREBY ORDERED that plaintiff's request for appointment of  
2 counsel, ECF No. 23, is denied without prejudice.

3           Additionally, IT IS HEREBY RECOMMENDED that plaintiff's motion for preliminary  
4 injunctive relief, ECF No. 23, be denied.

5           These findings and recommendations are submitted to the United States District Judge  
6 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
7 after being served with these findings and recommendations, any party may file written  
8 objections with the court and serve a copy on all parties. Such a document should be captioned  
9 "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that  
10 failure to file objections within the specified time may waive the right to appeal the District  
11 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 DATED: January 14, 2016

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14 ALLISON CLAIRE  
15 UNITED STATES MAGISTRATE JUDGE  
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