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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

TIM DAVIS,

Plaintiff,

v.

MARION SPEARMAN, et al.,

Defendants.

No. 2:19-CV-0848-MCE-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s motion, ECF No. 47, for injunctive relief.

The legal principles applicable to requests for injunctive relief, such as a temporary restraining order or preliminary injunction, are well established. To prevail, the moving party must show that irreparable injury is likely in the absence of an injunction. See Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing Winter v. Natural Res. Def. Council, Inc., 129 S.Ct. 365 (2008)). To the extent prior Ninth Circuit cases suggest a lesser standard by focusing solely on the possibility of irreparable harm, such cases are “no longer controlling, or even viable.” Am. Trucking Ass’ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). Under Winter, the proper test requires a party to demonstrate: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of an

1 injunction; (3) the balance of hardships tips in his favor; and (4) an injunction is in the public
2 interest. See Stormans, 586 F.3d at 1127 (citing Winter, 129 S.Ct. at 374). The court cannot,
3 however, issue an order against individuals who are not parties to the action. See Zenith Radio
4 Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969). Moreover, if an inmate is seeking
5 injunctive relief with respect to conditions of confinement, the prisoner’s transfer to another
6 prison renders the request for injunctive relief moot, unless there is some evidence of an
7 expectation of being transferred back. See Prieser v. Newkirk, 422 U.S. 395, 402-03 (1975);
8 Johnson v. Moore, 948 F.3d 517, 519 (9th Cir. 1991) (per curiam).

9 Here, Plaintiff asserts that he is being subject to retaliation by unnamed prison
10 staff at Salinas Valley State Prison as a result of utilizing the prison’s grievance process. See
11 ECF No. 47. Specifically, Plaintiff contends he is being denied access to the prison law library.
12 See id. Plaintiff states he is seeking “an order for an Intervention,” though he does not specify
13 what relief he wants the Court to provide.

14 The Court finds that injunctive relief is unwarranted for two reasons. First, the
15 Court cannot issue injunctive relief against individuals who are not a party to this action, which
16 concerns allegations of misconduct by prison officials at High Desert State Prison. Second,
17 Plaintiff has not demonstrated how he is likely to suffer irreparable injury absent court
18 intervention related to law library access.

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Based on the foregoing, the undersigned recommends that Plaintiff's motion, ECF No. 47, for injunctive relief be denied.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: November 20, 2020



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE