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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Lee Michael Beitman,  
10 Plaintiff,

11 v.

12 S. Herrick, et al.,  
13 Defendants.  
14

No. CV-17-08229-PCT-JAT

**ORDER**

15 Pending before the Court is Plaintiff's Motion to Order Timely Copies. (Doc.  
16 255).

17 In his Motion, Plaintiff seeks an order requiring the Arizona Department of  
18 Corrections (ADOC) "to have copies made available to inmates doing [litigation] with  
19 the Court every business day before the legal mail goes out." (Doc. 255 at 2–3). In  
20 Plaintiff's view, ADOC and its library staff should be able to make use of the "several  
21 other copy machines available" throughout the prison facility for inmate legal copies  
22 instead of requiring that inmates only "have legal copies made in the facility library." (*Id.*  
23 at 1–2). Plaintiff notes that it has been particularly difficult to get his legal copies made in  
24 time for his litigation deadlines during the Covid-19 lockdown procedures over the past  
25 two years. (*Id.* at 1).

26 Plaintiff does not rely on any legal authority for his contention that the Court may  
27 order the ADOC and its staff to expedite the timeline for legal copies based on Plaintiff's  
28 schedule. Moreover, to the extent Plaintiff is arguing that his right to access the courts is

1 being infringed, the Court is not persuaded. As stated in the Court’s February 3, 2022,  
2 Order (Doc. 249), while the U.S. Supreme Court previously held that “the fundamental  
3 constitutional right of access to the courts requires prison authorities to assist inmates in  
4 the preparation and filing of meaningful legal papers by providing prisoners with  
5 adequate law libraries or adequate assistance from persons trained in the law,” *Bounds v.*  
6 *Smith*, 430 U.S. 817, 828 (1977), the U.S. Supreme Court has since explained that the  
7 right to access the courts prevents “state prison officials from actively interfering with  
8 inmates’ attempts to prepare legal documents or file them,” but does not establish a right  
9 to a law library or affirmative legal assistance, *Lewis v. Casey*, 518 U.S. 343, 350–51  
10 (1996).

11 Here, Plaintiff has not shown that the ADOC’s alleged failure to provide him with  
12 copies at his preferred speed constitutes active interference with his litigation or that it  
13 has prejudiced him in any way. Indeed, the Court has routinely granted his motions for  
14 extension throughout this case.

15 Additionally, Plaintiff’s Motion amounts to a request for a mandatory preliminary  
16 injunction on the ADOC to change its inmate legal copy procedures. Plaintiff has not met  
17 the standard for such an injunction.

18 “A preliminary injunction is ‘an extraordinary and drastic remedy, one that should  
19 not be granted unless the movant, by a clear showing, carries the burden of persuasion.’”  
20 *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*,  
21 520 U.S. 968, 972 (1997)(per curiam)); *see also Winter v. Natural Res. Def. Council,*  
22 *Inc.*, 555 U.S. 7, 24 (2008) (citation omitted) (“[a] preliminary injunction is an  
23 extraordinary remedy never awarded as of right”). A plaintiff seeking a preliminary  
24 injunction must show that (1) he is likely to succeed on the merits, (2) he is likely to  
25 suffer irreparable harm without an injunction, (3) the balance of equities tips in his favor,  
26 and (4) an injunction is in the public interest. *Winter*, 555 U.S. at 20. “But if a plaintiff  
27 can only show that there are ‘serious questions going to the merits’—a lesser showing  
28 than likelihood of success on the merits—then a preliminary injunction may still issue if

1 the ‘balance of hardships tips sharply in the plaintiff’s favor,’ and the other two *Winter*  
2 factors are satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th  
3 Cir. 2013) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th  
4 Cir. 2011)). Under this ‘serious questions’ variant of the *Winter* test, “[t]he elements ...  
5 must be balanced, so that a stronger showing of one element may offset a weaker  
6 showing of another.” *Lopez*, 680 F.3d at 1072.

7       Regardless of which standard applies, the movant “has the burden of proof on each  
8 element of the test.” *See Env’tl. Council of Sacramento v. Slater*, 184 F.Supp.2d 1016,  
9 1027 (E.D. Cal. 2000). Further, there is a heightened burden where a plaintiff seeks a  
10 mandatory preliminary injunction, which should not be granted “unless the facts and law  
11 clearly favor the plaintiff.” *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1441  
12 (9th Cir. 1986) (citation omitted); *see also Stanley v. Univ. of S. Calif.*, 13 F.3d 1313,  
13 1320 (9th Cir. 1994) (“A mandatory injunction ‘goes well beyond simply maintaining the  
14 status quo pendente lite [and] is particularly disfavored.” (quoting *Anderson v. United*  
15 *States*, 612 F.2d 1112, 1114 (9th Cir.1979))). Additionally, the Prison Litigation Reform  
16 Act imposes additional requirements on prisoner litigants who seek preliminary  
17 injunctive relief against prison officials and requires that any injunctive relief be narrowly  
18 drawn and the least intrusive means necessary to correct the harm. 18 U.S.C. §  
19 3626(a)(2); *see Gilmore v. People of the State of Cal.*, 220 F.3d 987, 999 (9th Cir. 2000).


20       Here, Plaintiff does not address any of the *Winter* factors required for obtaining  
21 preliminary injunctive relief. Nor does he provide any sworn affidavits or other  
22 admissible evidence to support his Motion. A motion for preliminary injunction,  
23 including the likelihood of irreparable injury, must be supported by “[e]vidence that goes  
24 beyond the unverified allegations of the pleadings.” *Fidelity Nat’ l Title Ins. Co. v.*  
25 *Castle*, C 11-0896 SI, 2011 WL 5882878, at \*3 (N.D. Cal. 2011) (internal citation  
26 omitted). Moreover, neither Defendant in this case works in the prison library so this case  
27 does not name the proper parties for the Court to issue the injunction that Plaintiff seeks.

28       Accordingly,

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**IT IS ORDERED** that Plaintiff's Motion to Order Timely Copies (Doc. 255) is **DENIED**.

Dated this 18th day of February, 2022.



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James A. Teilborg  
Senior United States District Judge