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

Parnell Curtis,

Plaintiff,

vs.

Buckley, et al.,

Defendants.

) No. 06-CV-00230-SMM

) **ORDER**

Before the Court is Plaintiff’s Motion for Declaratory Relief (Dkt. 47), which the Court construes as a Motion for Preliminary Injunction. In Plaintiff’s motion filed on January 26, 2009, Plaintiff stated that he sought declaratory relief. A party seeking declaratory relief must show an actual controversy and satisfy all jurisdictional requirements. Gov’t Employees Ins. Co. v. Dizo1, 133 F.3d 1220, 1222 (9<sup>th</sup> Cir. 1998). However, in his motion, Plaintiff actually seeks a preliminary injunction. Because Plaintiff is a pro se litigant, the Court must construe his motion as one for injunctive relief. Bernhardt v. Los Angeles County, 339 F.3d 920, 925 (9<sup>th</sup> Cir. 2003).

**BACKGROUND**

Defendants Alvarez and Munoz are correctional officers at the California State Prison Corcoran. (Dkt. 18, Am. Compl. 2.) Defendants are responsible for enforcing laws, regulations, and procedures which govern the activities of prisoners. (Id. at 2.) Plaintiff alleges that on June 13, 2005, Defendant Alvarez handed him a receipt for a cell search and

1 removed property. (Id. at 4.) Plaintiff argues that Alvarez threatened to keep him in the cage  
2 all day if he did not sign the receipt, which stated that Plaintiff destroyed some state issued  
3 property. (Id. at 4.) Plaintiff argues that when he refused to sign the receipt, Alvarez then  
4 stated “that’s what happens to inmates who rat on officers, saying they’ve seen an assault on  
5 an inmate.” (Id. at 5.) To avoid further confrontation, Plaintiff signed the receipt. (Id. at 5.)  
6 Plaintiff brought this Amended Complaint and presented several claims for relief against  
7 multiple defendants under 42 U.S.C. § 1983. In May 2007, pursuant to 28 U.S.C. § 1915(A),  
8 a magistrate judge screened the order and sent the suggested Findings and Recommendations  
9 to the District Court. (Dkt. 20, R&R 9.) In August 2007, the District Court adopted the  
10 Findings and Recommendations in full. (Dkt. 24, Order Adopting R&R 1.) Only Plaintiff’s  
11 First Amendment retaliation claim against Defendants Alvarez and Munoz remains. On  
12 November 24, 2008, this case was reassigned from the Eastern District of California to the  
13 undersigned judge. (Dkt. 46.) Plaintiff now moves for preliminary injunctive relief for his  
14 retaliation claim against Defendants Alvarez and Munoz.

#### 15 **STANDARD OF REVIEW**

16 The purpose of a preliminary injunction is to preserve the relative positions of the  
17 parties - the status quo - until a full trial on the merits can be conducted. See Univ. of Tex.  
18 v. Camenisch, 451 U.S. 390, 395 (1981). In the Ninth Circuit, two interrelated tests exist for  
19 determining the propriety of the issuance of a preliminary injunction. The moving party  
20 carries the burden of proof on each element of either test. L.A. Mem’l Coliseum Comm’n  
21 v. Nat’l Football League, 634 F.2d 1197, 1203 (9<sup>th</sup> Cir. 1980). Under the first “traditional”  
22 test, the court may not issue a preliminary injunction unless each of the following  
23 requirements is satisfied: (1) the moving party has demonstrated a likelihood of success on  
24 the merits, (2) the moving party will suffer irreparable injury and has no adequate remedy  
25 at law if injunctive relief is not granted, (3) in balancing the equities, the non-moving party  
26 will not be harmed more than the moving party is helped by the injunction, and (4) granting  
27 the injunction is in the public interest. Martin v. Int’l Olympic Comm., 740 F.2d 670, 674-  
28 675 (9<sup>th</sup> Cir. 1984).

1 Under the second “alternative” test, the court may not issue a preliminary injunction  
2 unless the moving party demonstrates either “probable success on the merits and irreparable  
3 injury . . . or . . . sufficiently serious questions going to the merits to make the case a fair  
4 ground for litigation and a balance of hardships tipping decidedly in favor of the party  
5 requesting relief.” Topanga Press Inc. v. City of Los Angeles, 989 F.2d 1524, 1528 (9<sup>th</sup> Cir.  
6 1993). The Ninth Circuit has explained that the two parts of the alternative test are not  
7 separate and unrelated, but are “extremes of a single continuum.” Benda v. Grand Lodge of  
8 Int’l Ass’n of Machinists, 584 F.2d 308, 315 (9<sup>th</sup> Cir. 1978).

## 9 DISCUSSION

10 Plaintiff seeks relief in the form of a order compelling Defendants to perform their  
11 existing duties under the United States Constitution. (Mot. for Declaratory Relief 2.)  
12 Furthermore, Plaintiff requests that this Court order Defendants return his property under all  
13 circumstances that do not present safety and security threats. Plaintiff also requests that this  
14 Court order Defendants not to retaliate against him for pursuing legal actions. (Id. at 3.) As  
15 stated earlier, Plaintiff must show four factors: 1) that he is likely to succeed on the merits,  
16 2) that he is likely to suffer irreparable harm in the absence of preliminary relief, 3) that the  
17 balance of equities tips in his favor, and 4) that an injunction is in the public interest. Winter  
18 v. Natural Res. Def. Council, Inc., 129 S.Ct. 365, 374 (2008).

### 19 **I. Success on the Merits**

20 Within the prison context, a First Amendment retaliation claim has five elements: (1)  
21 an assertion that a state actor took some adverse action against an inmate (2) because of (3)  
22 that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his  
23 First Amendment rights, and (5) the action did not reasonably advance a legitimate  
24 correctional goal. Rhodes v. Robinson, 408 F.3d 559, 567-68 (9<sup>th</sup> Cir. 2005). In order for  
25 Plaintiff to be successful, he must show that Defendants Alvarez and Munoz took adverse  
26 action by wrongfully charging him with the destruction of state property because he was a  
27 witness against another officer in a prisoner assault case. Plaintiff must also show that  
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1 Defendants chilled his First Amendment rights. Furthermore, Plaintiff must show that  
2 Defendants' actions did not reasonably advance any legitimate correctional goal.

3 In this case, Plaintiff alleged that Defendants charged him with the destruction of state  
4 property, but he has not shown that they did so wrongfully or in retaliation for him being a  
5 witness. Moreover, he has produced no documents, statements, or any other kind of evidence  
6 to support his claim that Defendants chilled his First Amendment rights or that Defendants'  
7 actions did not reasonably advance any legitimate correctional goal. Because Plaintiff has  
8 not produced any evidence demonstrating his likelihood of success on the merits, Plaintiff's  
9 motion should not be granted.

## 10 **II. Irreparable Harm or Injury**

11 Plaintiff's failure to establish a likelihood of success on the merits alone precludes  
12 issuance of a preliminary injunction, but the Court will consider whether Plaintiff has  
13 established the existence of irreparable harm. See MMJK, Inc. v. Ultimate Blackjack Tour  
14 LLC, 513 F. Supp. 2d 1150, 1156 (N.D. Cal. 2007). Plaintiff must do more than allege  
15 imminent harm to obtain preliminary injunctive relief; he must demonstrate immediate  
16 threatened injury. L.A. Mem'l. Coliseum Comm'n, 634 F.2d at 1201.

17 In his amended complaint, Plaintiff alleges that he is at risk from suffering repeated  
18 and future atypical hardships, severe physical injury, and psychological and emotional pain  
19 and suffering unless the Court grants his preliminary injunction. (Am. Compl. 15.) However,  
20 Plaintiff has not presented any evidence or facts that he would indeed suffer any future  
21 atypical hardships, severe physical injury, or psychological and emotional pain and suffering.  
22 He has not produced any medical records of his physical injuries, such as doctor's exams or  
23 diagnoses. Neither has he produced any evidence of his psychological and emotional pain,  
24 such as psychological evaluations or recommendations. As Plaintiff has not produced any  
25 evidence demonstrating that he will suffer irreparable harm or injury if the preliminary  
26 injunction is not granted, his motion should not be granted.

27 Plaintiff cannot meet the burden of proof under the alternative test either. As noted,  
28 under the alternative test, the balance of hardships and the probability of success on the

1 merits are “the outer reaches of a single continuum.” Lopez v. Heckler, 713 F.2d 1432, 1435  
2 (9<sup>th</sup> Cir. 1983) (citation and internal quotation omitted). “If the balance of hardships tips  
3 decidedly toward the plaintiff, then he need not show as robust a likelihood of success on the  
4 merits as when the balance tips less decidedly.” Benda, 584 F.2d at 315. Here, Plaintiff  
5 needed to show a high probability of irreparable harm or injury because he could not show  
6 that he would be likely to succeed on the merits. He failed to do so, therefore his motion  
7 should be denied.

### 8 **III. The Balance of Equities & The Public Interest**

9 Courts have analyzed the balance of equities and the public interest together. See  
10 Winter, 129 S.Ct. at 378; see also Am. Trucking Assn’s, Inc. v. City of Los Angeles, 559  
11 F.3d 1046, 1059-60 (9<sup>th</sup> Cir. 2009). The court must consider whether its “exercise of  
12 equitable discretion . . . heel[s] to the identified violation and respect[s] the interests of state  
13 and local authorities in managing their own affairs, consistent with the Constitution.”  
14 Gilmore v. People of the State of California, 220 F.3d 987, 1005 (9<sup>th</sup> Cir. 2000) (quotations  
15 omitted). When a state agency is involved, these considerations are strengthened because  
16 of federalism concerns. See O’Shea v. Littleton, 414 U.S. 488, 499 (1974). Any injunctive  
17 relief awarded must avoid unnecessary disruption to the state agency’s normal course of  
18 proceedings. See O’Shea v. Littleton, 414 U.S. 488 (1974).

19 As noted, relief is not appropriate because Plaintiff has not presented any evidence  
20 that Defendants in this case have engaged or will engage in any retaliatory conduct. Plaintiff  
21 argues that if the injunctive relief is not granted, then he will suffer from atypical hardships  
22 and severe physical, psychological, and emotional pain. However, as noted, Plaintiff has not  
23 shown that he will suffer a real or immediate threat of harm. With regards to how the scope  
24 of the relief should be tailored, Plaintiff requests that the Court take an active role in  
25 enforcing the California Department of Corrections and Rehabilitation (CDCR) rules and  
26 regulations regarding a correctional officer’s behavior toward inmates. (Am. Compl. 23.)  
27 Plaintiff has alleged that only two correctional officers violated his rights, yet he asks the  
28 Court to enforce CDCR rules throughout the prison system and for every correctional officer.

1 Thus, the Court would unnecessarily interfere with the state's managing of its own affairs  
2 and disrupt its normal course of proceedings. See O'Shea, 414 at 501. Moreover, other than  
3 his own statements, Plaintiff has not produced any evidence showing that Defendants acted  
4 in a retaliatory manner, so it would not be in the public's interest to enforce the preliminary  
5 injunction. Because the balance of equities does not tip in Plaintiff's favor and the granting  
6 of the motion would not be in the public's interest, the Court should deny the motion for  
7 injunctive relief.

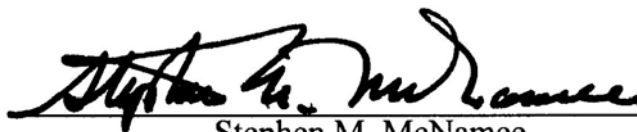
### 8 CONCLUSION

9 For his First Amendment claim against Defendants Alvarez and Munoz, Plaintiff  
10 cannot show that he will succeed on the merits, he is likely to suffer irreparable or imminent  
11 harm, the balance of equities tips in his favor, or the injunction is in the public interest. The  
12 public interest lies with the state in this case because of the latitude of discretion afforded to  
13 them. Furthermore, the preliminary injunctive relief that Plaintiff seeks is what he would  
14 obtain after a successful full trial on the merits, and thus, the granting of such relief at this  
15 time would not preserve the status quo. See Univ. of Tex., 451 U.S. at 395.

16 Accordingly,

17 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Declaratory Relief (Dkt. 47),  
18 which the Court construes as a Motion for Preliminary Injunction, is **DENIED**.

19 DATED this 5<sup>th</sup> day of August, 2009.

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23 Stephen M. McNamee  
24 United States District Judge  
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