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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

VINCENT C. BRUCE,

Plaintiff,

v.

JEANNE WOODFORD, et al.,

Defendants.

CASE NO. 1:07-cv-00269-AWI-SKO PC

ORDER RE MOTIONS

(Docs. 79, 80, 81, 82)

and

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT PLAINTIFF'S  
REQUEST FOR PRELIMINARY INJUNCTIVE  
RELIEF BE DENIED

(Doc. 79)

OBJECTIONS DUE WITHIN 30 DAYS

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Plaintiff Vincent C. Bruce ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Before the Court are four motions from Plaintiff.

On August 27, 2010, Plaintiff filed a motion requesting appointment of counsel, or in the alternative, an order requiring prison officials to provide Plaintiff with adequate law library access. (Doc. # 79.)

Plaintiff also filed a motion requesting "limited discovery" to prepare objections to the Findings and Recommendations issued by the Court on August 2, 2010. (Doc. #80.) Plaintiff claims that he needs to request documents from Defendants that will defeat the statute of limitations argument raised in their motion to dismiss.

1 Plaintiff's third motion is a "Request for Guidance on Written Objections to Magistrate's  
2 Findings & Recommendations." (Doc. #81.) Plaintiff requests "guidance" on whether he is allowed  
3 to submit exhibits with his objections to the findings and recommendations. Plaintiff also wishes  
4 to know whether he may submit a proposed amended complaint with his objections.

5 Plaintiff's fourth motion is a request for a 60-day extension of time to file objections to the  
6 Findings and Recommendations. (Doc. # 82.)

7 **I. Plaintiff's Motions**

8 **A. Motion for Appointment of Counsel/Law Library Access**

9 On August 27, 2010, Plaintiff filed a motion requesting appointment of counsel or, in the  
10 alternative, requesting an order requiring prison officials to provide Plaintiff with adequate time in  
11 the law library.

12 **1. Appointment of Counsel**

13 Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v.  
14 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an attorney to represent  
15 plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern  
16 District of Iowa, 490 U.S. 296, 298, 109 S.Ct. 1814, 1816 (1989). However, in certain exceptional  
17 circumstances the court may request the voluntary assistance of counsel pursuant to section  
18 1915(e)(1). Rand, 113 F.3d at 1525.

19 Without a reasonable method of securing and compensating counsel, the court will seek  
20 volunteer counsel only in the most serious and exceptional cases. In determining whether  
21 "exceptional circumstances exist, the district court must evaluate both the likelihood of success of  
22 the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in light of the complexity  
23 of the legal issues involved." Id. (internal quotation marks and citations omitted).

24 In the present case, the court does not find the required exceptional circumstances. Even if  
25 it is assumed that plaintiff is not well versed in the law and that he has made serious allegations  
26 which, if proved, would entitle him to relief, his case is not exceptional. This court is faced with  
27 similar cases almost daily. Further, at this early stage in the proceedings, the court cannot make a  
28 determination that plaintiff is likely to succeed on the merits, and based on a review of the record

1 in this case, the court does not find that plaintiff cannot adequately articulate his claims. Id.  
2 Plaintiff's request for appointment of counsel will be denied.

3 **2. Law Library Access**

4 Plaintiff requests the Court to order prison officials to provide Plaintiff with adequate access  
5 to the law library. In essence, Plaintiff is seeking a preliminary injunction.

6 The purpose of a preliminary injunction is to preserve the status quo if the balance of equities  
7 so heavily favors the moving party that justice requires the court to intervene to secure the positions  
8 until the merits of the action are ultimately determined. University of Texas v. Camenisch, 451 U.S.  
9 390, 395 (1981). "A plaintiff seeking a preliminary injunction must establish that he is likely to  
10 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,  
11 that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter  
12 v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 374 (2008).

13 "[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be  
14 granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v.  
15 Armstrong, 520 U.S. 968, 972 (1997) (quotations and citations omitted) (emphasis in original). A  
16 party seeking a preliminary injunction simply cannot prevail when that motion is unsupported by  
17 evidence. With respect to motions for preliminary injunctive relief or a temporary restraining order,  
18 the Prison Litigation Reform Act ("PLRA") provides that:

19 [i]n any civil action with respect to prison conditions, to the extent  
20 otherwise authorized by law, the court may enter a temporary  
21 restraining order or an order for preliminary injunctive relief.  
22 Preliminary injunctive relief 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 that harm.

23 18 U.S.C. § 3626(a)(2).

24 Plaintiff has failed to demonstrate that he qualifies for preliminary injunctive relief. The  
25 Court notes that Plaintiff is not likely to succeed on the merits of his claims. The Findings and  
26 Recommendations issued on August 2, 2010 found that Plaintiff's claims are untimely and will likely  
27 result in the dismissal of most of his claims. The only remaining claim not addressed by the  
28 Findings and Recommendations is Plaintiff's claims against Defendant Sanchez, who has not yet

1 been served and will likely be dismissed pursuant to Federal Rule of Civil Procedure 4(m). Given  
2 the status of Plaintiff's claims, injunctive relief is not warranted. The Court will recommend that  
3 Plaintiff's request for preliminary injunctive relief be denied.

4 **B. Motion Requesting Limited Discovery**

5 Plaintiff requests that he be allowed to conduct "limited discovery" to propound document  
6 requests on Defendants. Plaintiff contends that he needs documents to establish when Plaintiff's  
7 claims accrued for statute of limitations purposes.

8 The Court will deny Plaintiff's motion. Plaintiff's request to conduct "limited discovery"  
9 is futile because he is not permitted to rely on extrinsic evidence to defeat Defendants' motion to  
10 dismiss. Defendants' motion to dismiss was based entirely on the allegations made in Plaintiff's  
11 complaint. Defendants were not permitted to rely on extrinsic evidence such as the documents  
12 Plaintiff is seeking to raise their statute of limitations defense. Similarly, Plaintiff is not permitted  
13 to rely on any extrinsic evidence such as the documents he is seeking to defeat Defendants' motion  
14 to dismiss. The Court notes that the accrual date for Plaintiff's claims was definitively established  
15 by the facts alleged by Plaintiff in his complaint. It is unclear how any extrinsic documents would  
16 alter the Court's analysis regarding the accrual date for Plaintiff's claims. Thus, Plaintiff's request  
17 to conduct "limited discovery" will be denied.

18 **C. Motion for Guidance**

19 Plaintiff's third motion requests guidance regarding whether it is permissible to submit  
20 exhibits along with his objections to the Findings and Recommendations or whether it is permissible  
21 to submit an amended complaint with his objections. The Court will not provide Plaintiff with legal  
22 advice. Plaintiff's motion will be denied.

23 **D. Motion for Extension of Time**

24 Plaintiff requests a 60-day extension of time to file objections to the Court's Findings and  
25 Recommendations. The Court will not provide Plaintiff with a 60-day extension of time. The Court  
26 will partially grant Plaintiff's request and will provide Plaintiff with a 30-day extension of time  
27 based on the showing made in his motion. Any further request for extension of time must be  
28 accompanied by a persuasive demonstration of good cause.

1 **II. Conclusion**

2 Based on the foregoing, the Court HEREBY ORDERS that:

- 3 1. Plaintiff's request for appointment of counsel is DENIED;
- 4 2. Plaintiff's request for "limited discovery" is DENIED;
- 5 3. Plaintiff's request for guidance is DENIED; and
- 6 4. Plaintiff's request for an extension of time is PARTIALLY GRANTED. Plaintiff is
- 7 granted thirty (30) days from the date of service of this order in which to file
- 8 objections to the August 2, 2010 Findings and Recommendations.

9 Further, based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's request

10 for an order requiring prison officials to provide Plaintiff with adequate law library access, which

11 the Court construes as a request for preliminary injunctive relief, be DENIED.

12 These Findings and Recommendations are submitted to the United States District Judge

13 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)

14 days after being served with these Findings and Recommendations, any party may file written

15 objections with the Court and serve a copy on all parties. Such a document should be captioned

16 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections

17 shall be served and filed within ten (10) days after service of the objections. The parties are advised

18 that failure to file objections within the specified time may waive the right to appeal the District

19 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20

21 IT IS SO ORDERED.

22 **Dated: September 7, 2010**

**/s/ Sheila K. Oberto**  
**UNITED STATES MAGISTRATE JUDGE**