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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NAKIA MCCLAIN,

Plaintiff,

v.

L. GONZALES, et al.,

Defendants.

CASE NO. 1:07-cv-00945-OWW-SKO PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENIAL OF MOTION FOR
PRELIMINARY INJUNCTIVE RELIEF

and

ORDER DENYING MOTION FOR EXTENSION
OF TIME

(Doc. 45)

OBJECTIONS DUE WITHIN 30 DAYS

_____ /

Plaintiff Nakia McClain (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On May 20, 2010, Plaintiff filed a motion for an extension of time. (Doc. #45.) Plaintiff’s motion also requests preliminary injunctive relief. Plaintiff asks the Court to order Defendants’ attorney to assist Plaintiff in gaining access to the prison’s law library. Defendants filed an opposition on June 3, 2010 and an amended opposition on June 15, 2010. (Docs. #47, 48.) Plaintiff has not filed a reply to Defendants’ opposition.

I. Discussion

Plaintiff requests a thirty (30) day extension of the discovery deadline. The Court’s May 5, 2009 discovery/scheduling order set a discovery cut-off date of January 4, 2010. (Doc. #29.) The Court later granted an extension of time for conducting discovery and extended the cut-off date

1 to June 30, 2010. (Doc. #44.)

2 Plaintiff's only argument in support of his request for an extension of time is that he is being
3 denied access to the prison law library because "it is the prison officials[sic] position that . . . inmates
4 seeking discovery and or responding to discovery requests do not need access to the prison law
5 library." (Pls.'[sic] Second Request for Enlargement of Time Pursuant to Rule 6(b), Fed. R. Civ.
6 P. 2, ECF No. 45.) Plaintiff provides no explanation as to what discovery request(s) he is preparing,
7 or to what discovery request(s) he is responding. Plaintiff provides no explanation as to why he
8 needs access to the prison law library other than the vague explanation that the library "provides
9 paging for legal case citations and not for legal materials and/or supplies." (Req. for Enlargement
10 of Time 2, ECF No. 45.) Defendants argue that Plaintiff has been given "Preferred Legal User"
11 status and that Plaintiff was given law library access on June 1, 2010, June 7, 2010, and June 14,
12 2010. (Am. Opp'n to Pl.'s Second Request for an Enlargement of Time 2:2-4, ECF No. 48.)

13 The Court will deny Plaintiff's request for an extension of time. Plaintiff has not set forth
14 persuasive arguments in support of his request for an extension of time. Plaintiff has not clearly
15 identified why he needs an extension of time to conduct discovery. Plaintiff has not indicated that
16 he is preparing any discovery requests or responses to any discovery requests. Further, Plaintiff has
17 not provided an adequate explanation as to why he was unable to prepare his requests or responses
18 before the June 30, 2010 deadline for conducting discovery. The Court notes that the discovery
19 deadline has already been extended nearly six (6) months past the original deadline.

20 The Court will also recommend that Plaintiff's request for preliminary injunctive relief be
21 denied. Plaintiff asks the Court to order Defendants' attorney to assist Plaintiff with gaining access
22 to the prison law library. The purpose of a preliminary injunction is to preserve the status quo if the
23 balance of equities so heavily favors the moving party that justice requires the court to intervene to
24 secure the positions until the merits of the action are ultimately determined. University of Texas v.
25 Camenisch, 451 U.S. 390, 395 (1981). "A plaintiff seeking a preliminary injunction must establish
26 that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence
27 of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the
28 public interest." Winter v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 374 (2008).

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

7 [i]n any civil action with respect to prison conditions, to the extent
8 otherwise authorized by law, the court may enter a temporary
9 restraining order or an order for preliminary injunctive relief.
10 Preliminary injunctive relief must be narrowly drawn, extend no
11 further than necessary to correct the harm the court finds requires
12 preliminary relief, and be the least intrusive means necessary to
13 correct that harm.

14 18 U.S.C. § 3626(a)(2).

15 The Court finds that Plaintiff has offered no argument or evidence in support of his request
16 for a preliminary injunction to assist him with gaining law library access. Plaintiff has made no
17 effort to demonstrate that he is likely to succeed on the merits of his case, is likely to suffer
18 irreparable harm in the absence of the Court’s intervention, that the balance of equities are in his
19 favor, or that the relief requested would be in the public’s interest. The Court will recommend that
20 Plaintiff’s request for injunctive relief be denied.

21 **II. Conclusion**

22 The Court finds that Plaintiff has failed to set forth any persuasive arguments that would
23 justify an extension of the discovery deadline or granting him preliminary injunctive relief.

24 Accordingly, it is HEREBY ORDERED that Plaintiff’s request for an extension of time is
25 DENIED.

26 Further, it is HEREBY RECOMMENDED that Plaintiff’s request for preliminary injunctive
27 relief be DENIED.

28 These Findings and Recommendations are submitted to the United States District Judge
assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
days after being served with these Findings and Recommendations, any party may file written
objections with the Court and serve a copy on all parties. Such a document should be captioned

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
2 shall be served and filed within ten (10) days after service of the objections. The parties are advised
3 that failure to file objections within the specified time may waive the right to appeal the District
4 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5
6 IT IS SO ORDERED.

7 **Dated:** June 26, 2010

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE