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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEXTER S. C. FARLOUGH,

Plaintiff,

v.

NICHOLAS DAWSON, et al.,

Defendants.

CASE NO. 1:07-cv-01108-AWI-YNP PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENIAL OF MOTIONS

(Doc. 19, 23)

Plaintiff Dexter S. C. Farlough (“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 October 9, 2009, Plaintiff filed an “Order to Show Cause for a Preliminary Injunction and a Temporary Restraining Order.” (Doc. 23.) The document appears to be a proposed order to be signed by the Court ordering Defendants to show cause why a preliminary injunction should not be issued against them. The Court will construe Plaintiff’s pleading as a motion for preliminary injunctive relief. On June 29, 2009, Plaintiff filed a motion for default judgment. (Doc. #19.)

I. Discussion

A. Motion for Preliminary Injunctive Relief

The purpose of a preliminary injunction is to preserve the status quo if the balance of equities so heavily favors the moving party that justice requires the court to intervene to secure the positions until the merits of the action are ultimately determined. University of Texas v. Camenisch, 451 U.S. 390, 395 (1981). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,

1 that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter
2 v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 374 (2008).

3 Federal courts are courts of limited jurisdiction, and as a preliminary matter, the court must
4 have before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983);
5 Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454 U.S. 464,
6 471 (1982). If the court does not have an actual case or controversy before it, it has no power to hear
7 the matter in question. Id. “A federal court may issue an injunction if it has personal jurisdiction
8 over the parties and subject matter jurisdiction over the claim; it may not attempt to determine the
9 rights of persons not before the court.” Zepeda v. United States Immigration Service, 753 F.2d 719,
10 727 (9th Cir. 1985) (emphasis added).

11 The Court advises Plaintiff that his First Amended Complaint was dismissed on October 6,
12 2009 for failing to state any claims. Thus, not only have Defendants not been served and have not
13 made an appearance in this action, there is no case or controversy before the Court because
14 Plaintiff’s complaint was dismissed. Therefore, the Court has no jurisdiction to issue any
15 preliminary injunctions.

16 The Court also advises Plaintiff that in order to obtain preliminary injunctive relief, he must
17 submit evidence that demonstrates that (1) he is likely to succeed on the merits, (2) that he is likely
18 to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in
19 his favor, and (4) that an injunction is in the public interest. Plaintiff’s pleading does not adequately
20 demonstrate any of these facts. Plaintiff describes the inadequacy of the law libraries, but does not
21 identify what irreparable harm he is likely to suffer. Plaintiff also requests an investigation regarding
22 the contents of his central file, but it is unclear what irreparable harm he is likely to suffer absent the
23 investigation.

24 Finally, the Court advises Plaintiff that with respect to motions for preliminary injunctive
25 relief or a temporary restraining order, the Prison Litigation Reform Act (“PLRA”) provides that:

26 [i]n any civil action with respect to prison conditions, to the extent
27 otherwise authorized by law, the court may enter a temporary
28 restraining order or an order for preliminary injunctive relief.
Preliminary injunctive relief must be narrowly drawn, extend no
further than necessary to correct the harm the court finds requires

1 preliminary relief, and be the least intrusive means necessary to
2 correct that harm.

3 18 U.S.C. § 3626(a)(2). Thus, any request for preliminary injunctive relief must demonstrate that
4 the relief requested is narrowly drawn, extends no further than necessary to correct the harm
5 requiring relief, and is the least intrusive means necessary to correct that harm. Plaintiff's pleading
6 does not demonstrate any of these factors. Therefore, the Court recommends that Plaintiff's motion
7 be denied.

8 **B. Motion for Default Judgment**

9 Plaintiff moves the Court to enter default judgement against the Defendants. Under Federal
10 Rule of Civil Procedure 55(a) “[w]hen a party against whom a judgment for affirmative relief is
11 sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise,
12 the clerk must enter the party’s default.” Plaintiff’s complaint was dismissed on October 6, 2009.
13 Further, the Court has not yet ordered any complaint to be served on Defendants. Plaintiff claims
14 that he “served the [First Amended Complaint] to each of the persons named below at the address
15 shown. By placing a true copy in a sealed envelope with postage fully prepaid in the U.S. mail at
16 the institutional mailroom.” (Compl. 37.) Plaintiff has not provided adequate proof that he properly
17 served Defendants. Plaintiff does not indicate that he served Defendants with properly executed
18 summonses along with his complaint. Further, while Plaintiff is permitted to use methods of service
19 authorized by state law under Federal Rule of Civil Procedure 4(e)(1) and that service by mail is
20 authorized under California law, there is no indication that Plaintiff complied with all of the
21 requirements of California Code of Civil Procedure § 415.30 for service by mail. Mailing only a
22 copy of the complaint does not effect proper service under California law. Plaintiff has not provided
23 written acknowledgment from Defendants that the complaint and summons has been received, as
24 required by California Code of Civil Procedure § 415.30(c). Plaintiff is further advised that because
25 he has been granted in forma pauperis status, he need not attempt service on his own because, when
26 proper, the Court will order a U.S. Marshal to effect service. Federal Rule of Civil Procedure
27 4(c)(3). Because Defendants have not been properly served and there is no complaint before the

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1 court, Defendants have not “failed to plead or otherwise defend.” Plaintiff has not demonstrated
2 that he is entitled to default judgment and the Court recommends that Plaintiff’s motion be denied.

3 **II. Conclusion and Recommendations**

4 The Court finds that Plaintiff has failed to demonstrate that he is entitled to preliminary
5 injunctive relief or default judgment. Plaintiff’s First Amended Complaint was dismissed for failing
6 to state any claims and Plaintiff was given the opportunity to file a Second Amended Complaint.
7 The Court is still awaiting receipt of Plaintiff’s Second Amended Complaint. Thus, there is no case
8 or controversy before the Court and the Court lacks jurisdiction to issue preliminary injunctive relief.
9 Further, the Court has not yet screened Plaintiff’s complaint and ordered service upon Defendants.
10 Therefore, Defendants are not yet required to answer Plaintiff’s complaint and Plaintiff is not entitled
11 to default judgment.

12 Based on the foregoing, the court HEREBY RECOMMENDS that:

- 13 1. Plaintiff’s October 9, 2009 “Order to Show Cause for a Preliminary Injunction and
14 a Temporary Restraining Order,” construed as a motion for preliminary injunctive
15 relief, be DENIED; and
- 16 2. Plaintiff’s June 29, 2009 motion for default judgment be DENIED.

17 These Findings and Recommendations will be submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30)**
19 **days** after being served with these Findings and Recommendations, plaintiff may file written
20 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
21 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
22 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d
23 1153 (9th Cir. 1991).

24 IT IS SO ORDERED.

25 **Dated: October 19, 2009**

26 /s/ Sandra M. Snyder
27 UNITED STATES MAGISTRATE JUDGE
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