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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Gerald Lee Miller, Jr.,

vs.

O. Rufion et al.,

Plaintiff,

Defendant.

CASE NO. 08cv1233 BTM (WMc)
ORDER RE: REQUEST FOR TEN
HOURS OF PRE-PAID PHONE
CALLS [Doc. No. 117]

I.

INTRODUCTION

On December 28, 2010, Gerald Lee Miller, Jr. (“Plaintiff”), proceeding *pro se* and *in forma pauperis* and currently incarcerated at Calipatria Correctional Facility, filed a request seeking from this Court “10 hours of pre-paid phone call’s [sic] to find and locate witnesses he intent [sic] to use at trial.” (Doc. No. 117 at p. 1.)

II.

DISCUSSION AND ORDER THEREON

A. Prepaid Phone Calls

In the request, Plaintiff contends he “has been isolated from the telephone and other line’s [sic] of communication such as letter’s [sic] which prevent him from making an adequate representation of his deliberate indifference claim’s [sic] over his medical treatment at Delano State Prison.” (Doc. No. 117 at p. 1.) Further, Plaintiff contends the hours would be used to contact a

1 “physician who treated the Plaintiff’s [sic] and other’s [sic] who would qualify to be an expert in
2 [Plaintiff’s deliberate indifference claim].” (Doc. No. 117 at p. 2.)

3 A necessary corollary of a defendant’s Sixth Amendment right to proceed *pro se* is the right
4 to have reasonable access to the resources necessary to prepare for his defense. *Milton v. Morris*,
5 767 F.2d 1443, 1446 (9th Cir. 1985). Further, the Ninth Circuit has held prisoners have a “First
6 Amendment right to telephone access, subject to reasonable security limitations.” *Keenan v. Hall*,
7 83 F.3d 1083, 1092 (9th Cir. 1998) (citing *Strandberg v. City of Helena*, 791 F.2d 744, 747 (9th
8 Cir. 1986)).

9 The Constitution, however, “does not demand that any means of [trial] preparation selected
10 by the inmate be made available . . .” *Phillips v. Hust*, 477 F.3d 1070, 1077 (9th Cir. 2007),
11 *vacated by Hust v. Phillips*, ___ U.S. ___, 129 S. Ct. 1036 (2009). Rather, prisons must provide
12 inmates with resources that meet “minimum constitutional standards” sufficient to provide
13 “meaningful, though perhaps not ideal” access to the courts. *Phillips v. Hust*, 588 F.3d 652, 656
14 (9th Cir. 2009) (internal quotation marks and citation omitted); *see, e.g., Lindquist v. Idaho State*
15 *Bd. Corr.*, 776 F.2d 851, 856 (9th Cir. 1985) (holding inmates have no right to a typewriter to
16 prepare legal documents where court rules permit *pro se* litigants to hand-write their pleadings).

17 Here, Plaintiff provides insufficient information for the Court to determine whether prison
18 officials have unconstitutionally limited Plaintiff’s ability to find and locate witnesses he intends to
19 call at trial. First, the Court notes Plaintiff asks for “pre-paid” phone calls. It is unclear how the
20 Court may grant Plaintiff’s request because the Court finds no authority allowing it to provide a
21 state inmate financial resources for pre-paid phone calls.

22 Second, Plaintiff fails to provide any information regarding the extent of his alleged
23 “isolat[ion] from the telephone and other line’s [sic] of communication such as letter’s [sic] . . .”
24 (Doc. No. 117 at p. 1.) As mentioned previously, a prisoner’s First Amendment right to telephone
25 access is subject to reasonable security limitations. *See Keenan, supra*. Plaintiff provides no
26 information concerning (a) the circumstances under which his telephone access has been limited and
27 (b) the extent to which his telephone access has been limited. Similarly, Plaintiff fails to provide the
28 Court any evidence showing other forms of communication, *e.g.*, U.S. Mail, are unavailable to him.

1 **B. Conclusion**

2 Based on the foregoing, Plaintiff's request for ten hours of pre-paid phone calls is **DENIED**
3 **without prejudice.**

4 **IT IS SO ORDERED.**

5 DATED: January 6, 2011

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7 Hon. William McCurine, Jr.
8 U.S. Magistrate Judge, U.S. District Court

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