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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JESSE EDWARD BEJARAN,

Plaintiff,

v.

DERRAL ADAMS, et al.,

Defendants.

CASE NO. 1:09-cv-00478-AWI-SKO PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT PLAINTIFF’S
MOTION FOR A TEMPORARY RESTRAINING
ORDER BE DENIED

(Doc. 20.)

OBJECTIONS DUE WITHIN 30 DAYS

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Plaintiff Jesse Edward Bejaran (“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 December 21, 2009, Plaintiff filed a motion requesting a temporary restraining order alleging prison officials are tampering with his mail. (Doc. #20.)

The purpose of a temporary restraining order or 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, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 374 (2008).

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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 Plaintiff has not shown that he is entitled to the extraordinary remedy of a temporary
16 restraining order. The only evidence included with Plaintiff’s motion is a three-page declaration
17 from Plaintiff stating that he will suffer irreparable injury because Defendants have been tampering
18 with Plaintiff’s legal mail. Plaintiff complains that Defendants are opening mail from the Court
19 addressed to Plaintiff outside his presence. Mail from the Court is not privileged or confidential or
20 otherwise afforded protection beyond that which is provided for ordinary mail. See Keenan v. Hall,
21 83 F.3d 1083, 1094 (9th Cir. 1996). Mail from the Court generally consists of information that can
22 easily be accessed by any member of the public. Plaintiff has cited no authority that supports the
23 proposition that he suffers a constitutional injury when mail from the Court is opened outside his
24 presence. Plaintiff also complains that prison officials are not sending his outgoing mail addressed
25 to the Court. Notably, Plaintiff has not missed any deadlines in this case and has not suffered any
26 prejudice in this case due to late filings.

27 Plaintiff also complains that prison officials will conduct harassing cell searches to confiscate
28 Plaintiff’s legal materials and interfere with his legal research. Plaintiff’s allegations are speculative.
Plaintiff has failed to establish that the threat of irreparable injury is imminent. Plaintiff is not
entitled to the extraordinary remedy of a temporary restraining order based only on his conclusory
allegation that prison officials may confiscate his legal materials in the future.

1 Further, the Court notes that Plaintiff has made no effort to demonstrate that he is likely to
2 prevail on the merits of this action. Accordingly, the Court HEREBY RECOMMENDS that
3 Plaintiff's motion for a temporary restraining order be DENIED.

4 These Findings and Recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
6 days after being served with these Findings and Recommendations, any party may file written
7 objections with the Court and serve a copy on all parties. Such a document should be captioned
8 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
9 shall be served and filed within ten (10) days after service of the objections. The parties are advised
10 that failure to file objections within the specified time may waive the right to appeal the District
11 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12
13 IT IS SO ORDERED.

14 **Dated: July 30, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE