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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PATRICK KUNKEL,

Plaintiff,

v.

N. DILL, et al.,

Defendants.

CASE NO. 1:09-cv-00686-LJO-SKO PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DENIAL OF MOTIONS

(Docs. 42, 46)

OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Patrick Kunkel (“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 June 1, 2010, Plaintiff filed a motion requesting a preliminary injunction. (Doc. #42.) Plaintiff requests the Court to order Kern Valley State Prison to issue “pen fillers” for indigent prisoners, to provide unlimited copies for prisoner litigants, “access to PLU with any known deadline,” and to provide other services related to prisoner litigation. On June 21, 2010, Plaintiff filed a similar motion requesting the Court to order Kern Valley State Prison officials to provide Plaintiff with PLU status, unlimited copies, envelopes, paper, and pens. (Docs. #45.)

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,

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

9 [i]n any civil action with respect to prison conditions, to the extent
10 otherwise authorized by law, the court may enter a temporary
11 restraining order or an order for preliminary injunctive relief.
12 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.

13 18 U.S.C. § 3626(a)(2).

14 Plaintiff’s motions do not contain any discussion of Plaintiff’s likelihood of success on the
15 merits of this action, the existence of any threat of irreparable harm, the balance of the equities, the
16 public’s interest, or whether the relief requested is the least intrusive means necessary to correct the
17 threat of irreparable harm. Accordingly, the Court will recommend that the motions be denied.

18 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff’s motions requesting
19 preliminary injunction be DENIED.

20 These Findings and Recommendations are submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
22 days after being served with these Findings and Recommendations, any party may file written
23 objections with the Court and serve a copy on all parties. Such a document should be captioned
24 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
25 shall be served and filed within ten (10) days after service of the objections. The parties are advised

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1 that failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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7 IT IS SO ORDERED.

8 **Dated:** February 4, 2011

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE