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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARLIN LATTEREAL ROYAL,

CASE NO. 1:09-cv-01407-SKO PC

Plaintiff,

ORDER DENYING MOTION

v.

(Doc. #11.)

S. KNIGHT, et al.,

Defendants.

Plaintiff Marlin Lattereal Royal (“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 7, 2009, Plaintiff filed a motion requesting the Court to order prison officials to allow Plaintiff to use the law library. (Doc. #11.) Plaintiff has consented to jurisdiction by U.S. Magistrate Judge. (Doc. #5.)

Plaintiff’s request for Court intervention is by its nature a request injunctive relief that is governed by Federal Rule of Civil Procedure 65. Since Defendants have not been provided with notice of the pending motion because they have not yet been served, Plaintiff must not only satisfy the requirements for obtaining a preliminary injunction but must also satisfy the requirements set forth in Rule 65(b)(1) for obtaining relief without providing notice to the adverse party.

The purpose of a preliminary injunction or temporary restraining order 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,

1 and that an injunction is in the public interest.” Winter v. Natural Resources Defense Council, Inc.,
2 129 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 has failed to meet the requirements for obtaining the relief he seeks. Plaintiff has
15 not demonstrated that he is likely to suffer irreparable harm, has presented no evidence to establish
16 he is likely to succeed on the merits of this action, and has made no arguments regarding the balance
17 of the equities or that the relief he seeks is in the public’s interest. Additionally, Plaintiff has failed
18 to set forth facts in an affidavit to show that irreparable harm will occur before Defendants can be
19 heard in opposition. See Federal Rule of Civil Procedure 65(b)(1)(A). Further, Plaintiff has not
20 presented any reasons why the Court should grant Plaintiff the relief he requests despite the fact that
21 Defendants have not been provided with notice of Plaintiff’s motion and have not been given the
22 opportunity to be heard. See Federal Rule of Civil Procedure 65(b)(1)(B).

23 Accordingly, the Court HEREBY ORDERS that Plaintiff’s motion for injunctive relief, filed
24 on December 7, 2009, is DENIED.

25
26 IT IS SO ORDERED.

27 **Dated: July 30, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE