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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SCOTT E. POMBRIO,

1:10-cv-00191-OWW-DLB (HC)

Petitioner,

FINDINGS AND RECOMMENDATION
REGARDING PETITIONER’S MOTIONS FOR
RELEASE AND PRELIMINARY
INJUNCTION

v.

KEN CLARK,

[Docs. 15, 20]

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Petitioner filed the instant petition for writ of habeas corpus on February 1, 2010, and an amended petition on June 1, 2010. Petitioner claims his constitutional rights were violated in relation to certain disciplinary proceedings.

Now pending before the Court is Petitioner’s motion for release and preliminary injunction filed on August 2, 2010, and August 9, 2010.

DISCUSSION

To prevail in obtaining a preliminary injunction, the moving party must show that irreparable injury is likely in the absence of an injunction. See Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing Winter v. Natural Res. Def. Council, Inc., ___ U.S. ___, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008)). Winter requires a party to demonstrate: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of an injunction;

1 (3) the balance of hardships tips in his favor; and (4) an injunction is in the public interest.

2 Stormans, 586 F.3d at 1127 (citing Winter, 129 S.Ct. at 374.)

3 In his motions, Petitioner merely argues the merits of his underlying petition, and after
4 review of all documents in the record the Court finds he has not demonstrated that irreparable
5 injury is likely absent an injunction. Petitioner claims that he is being falsely imprisoned and he
6 is entitled to release from any further parole term. Petitioner is challenges certain disciplinary
7 proceedings which have been issued against him, and any such injury does not appear likely
8 given that this Court can credit Petitioner any relief to which he may be entitled if the Court finds
9 his claims to have merit.

10 RECOMMENDATION

11 Based on the foregoing, it is HEREBY RECOMMENDED that Petitioner’s motions for
12 release and injunctive relief be DENIED.

13 This Findings and Recommendation is submitted to the assigned United States District
14 Court Judge, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
15 Local Rules of Practice for the United States District Court, Eastern District of California.

16 Within thirty (30) days after being served with a copy, any party may file written objections with
17 the court and serve a copy on all parties. Such a document should be captioned “Objections to
18 Magistrate Judge’s Findings and Recommendation.” Replies to the objections shall be served
19 and filed within fourteen (14) days after service of the objections. The Court will then review the
20 Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that
21 failure to file objections within the specified time may waive the right to appeal the District
22 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 IT IS SO ORDERED.

24 **Dated: August 16, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE