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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ALBERTO VILLESAS,)	Case No.: 1:12-cv-02068-SAB (PC)
)	
Plaintiff,)	
)	ORDER DENYING PLAINTIFF’S MOTION FOR
v.)	COURT ORDER AND APPOINTMENT OF
)	COUNSEL AND STRIKING DISCOVERY
M.T. DOTSON, et al.,)	REQUEST FROM THE RECORD
)	
Defendants.)	[ECF Nos. 27, 28]
)	
)	

Plaintiff Alberto Villescas is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to the parties voluntarily consent to United States magistrate judge jurisdiction, the action was re-assigned to the undersigned on January 5, 2015. (ECF No. 34.)

**I.
INTRODUCTION**

Now pending before the Court is Plaintiff’s motion for court order and appointment of counsel, filed November 24, 2014. On December 2, 2014, the undersigned issued a Findings and Recommendation recommending denial of Plaintiff’s request for a court order and appointment of counsel. (ECF No. 28.) However, subsequent to the issuance of the Findings and Recommendations and prior to the adoption of such recommendation, the parties voluntarily consented to magistrate judge jurisdiction and the case was re-assigned to the undersigned on January 5, 2015. Accordingly, pursuant to the 28 U.S.C. § 636(c)(1), the Court hereby issues a ruling on Plaintiff’s pending request.

1 Plaintiff seeks a court order to allow him access to the law library for two to four hours per
2 week. Plaintiff indicates that he has filed inmate grievances and request for modification or
3 accommodation seeking access to the law library. However, Plaintiff has not had access to the law
4 library or copy services for over six weeks. In the alternative, Plaintiff seeks the appointment of
5 counsel to assist him in the continued litigation of this case. The Court construes Plaintiff's request as
6 a motion for a preliminary injunction to grant him access to the law library and/or copy services.

7 II.

8 DISCUSSION

9 A. Access to the Law Library and/or Copy Services

10 As previously stated, Plaintiff moves for a court order requiring the California Department of
11 Corrections and Rehabilitation (CDCR) to grant him access to the law library and/or copy services.

12 Plaintiff's motion includes allegation and a request for a court order against a party who is not
13 named in this action. Although the CDCR is the employer of the defendants in this action, it is not a
14 named party in this action. To the extent Plaintiff seeks injunctive relief against the CDCR, the Court
15 is unable to issue an order against individuals who are not parties to an action pending before it. See
16 Zenith Radio Corp., v. Hazeltine Research, Inc., 395 U.S. 100, 112 (1969).

17 A preliminary injunction should not issue unless necessary to prevent threatened injury that
18 would impair the court's ability to grant effective relief in a pending action. "A preliminary injunction
19 ... is not a preliminary adjudication on the merits but rather a device for preserving the status quo and
20 preventing the irreparable loss of right before judgment." Sierra On-Line, Inc. v. Phoenix Software,
21 Inc., 739 F.2d 1415, 1422 (9th Cir. 1984). A preliminary injunction represents the exercise of a far
22 reaching power not to be indulged except in a case clearly warranting it. Dymo Indus. V. Tapeprinter,
23 Inc., 326 F.2d 141, 143 (9th Cir. 1964). "The proper legal standard for preliminary injunctive relief
24 requires a party to demonstrate 'that he is likely to succeed on the merits, that he is likely to suffer
25 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and
26 that an injunction is in the public interest.'" Stormans, Inc., v. Selecky, 586 F.3d 1109, 1127 (9th Cir.
27 2009), quoting Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008). In cases brought by
28 prisoners involving conditions of confinement, any preliminary injunction "must be narrowly drawn,

1 extend no further than necessary to correct the harm the court finds requires preliminary relief, and be
2 the least intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

3 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey, 518
4 U.S. 343, 346 (1996); Silva v. Di Vittorio, 658 F.3d 1090, 1101 (9th Cir. 2011); Phillips v. Hust, 588
5 F.3d 652, 655 (9th Cir. 2009). However, to state a viable claim for relief, Plaintiff must show that he
6 suffered an actual injury, which requires “actual prejudice to contemplated or existing litigation.”
7 Nevada Dep’t of Corr. v. Greene, 648 F.3d 1014, 1018 (9th Cir. 2011) (citing Lewis, 518 U.S. at 348)
8 (internal quotation marks omitted); Christopher v. Harbury, 536 U.S. 403, 415 (2002); Lewis, 518
9 U.S. at 351; Phillips, 588 F.3d at 655.

10 A prisoner cannot submit conclusory declarations of injury by claiming his access to the courts
11 has been impeded. Thus, it is not enough for an inmate to show some sort of denial of access without
12 further elaboration. Plaintiff must demonstrate “actual injury” from the denial and/or delay of access.
13 The Supreme Court has described the “actual injury” requirement:

14 [T]he inmate ... must go one step further and demonstrate that the alleged
15 shortcomings in the library or legal assistance program hindered his efforts to pursue a
16 legal claim. He might show, for example, that a complaint he prepared was dismissed
17 for failure to satisfy some technical requirement which, because of deficiencies in the
18 prison’s legal assistance facilities, he could not have known. Or that he suffered
19 arguably actionable harm that he wished to bring before the courts, but was so stymied
20 by inadequacies of the law library that he was unable even to file a complaint.

21 Lewis, 518 U.S. at 351.

22 In this instance, Plaintiff has failed to allege or demonstrate “actual injury” by the failure of
23 access to the law library. Thus, Plaintiff has failed to demonstrate that in the absence of preliminary
24 injunctive relief he is likely to suffer actual injury in prosecuting his case. “Speculative injury does
25 not constitute irreparable injury sufficient to warrant granting a preliminary injunction.” Caribbean
26 Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988), citing Goldies Bookstore, Inc. v.
27 Superior Court, 739 F.2d 466, 472 (9th Cir. 1984). Plaintiff has provided no basis for this court to
28 interfere with the prison’s administration of its law library, and his request for injunctive relief should
be denied.

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1 **B. Appointment of Counsel**

2 There is no constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d
3 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to
4 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490
5 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the
6 voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

7 Without a reasonable method of securing and compensating counsel, the court will seek
8 volunteer counsel only in the most serious and exceptional cases. In determining whether
9 “exceptional circumstances exist, the district court must evaluate both the likelihood of success on the
10 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
11 legal issues involved.” Id. (internal quotation marks and citations omitted).

12 In the present case, the Court does find that neither the interests of justice nor exceptional
13 circumstances warrant appointment of counsel at this time. LaMere v. Risley, 827 F.2d 622, 626 (9th
14 Cir. 1987); Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991). Plaintiff is proceeding on claims
15 of deliberate indifference, retaliation, and excessive force, and Defendants filed an answer to the
16 complaint on April 23, 2014.

17 While a pro se litigant may be better served with the assistance of counsel, so long as a pro se
18 litigant, such as Plaintiff in this instance, is able to “articulate his claims against the relative
19 complexity of the matter,” the “exceptional circumstances” which might require the appointment of
20 counsel do not exist. Rand v. Rowland, 113 F.3d at 1525 (finding no abuse of discretion under 28
21 U.S.C. § 1915(e) when district court denied appointment of counsel despite fact that pro se prisoner
22 “may well have fared better-particularly in the realm of discovery and the securing of expert
23 testimony.”) Thus, the Court finds that Plaintiff’s conclusory claims relating to denial of access to law
24 library and copy services does not present exceptional circumstances warranting the appointment of
25 counsel at this time. Accordingly, Plaintiff motion for appointment of counsel should be DENIED,
26 without prejudice.

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C. Discovery Requests

Plaintiff attached several discovery requests to his present motion, along with a proof of service on Defendants.

As set forth in the Court’s First Informational Order, discovery is self-executing until such time as a party becomes dissatisfied with a response and seeks relief from the court pursuant to the Federal Rules of Civil Procedure. Interrogatories, requests for admissions, requests for production of documents, and responses thereto shall not be filed with the court until there is a proceeding in which the document or proof of service is at issue. Such documents are to be served on the opposing party, and not with the court. Local Rule 33-250, 36-250. Discovery requests improperly filed with the court shall be stricken from the record. (ECF No. 3.) Accordingly, for the foregoing reasons, Plaintiff’s discovery requests attached to his present motion should be stricken from the record.

**III.
ORDER**

Based on the foregoing,
IT IS HEREBY ORDERED that:

- 1. Plaintiff’s request for a preliminary injunction is DENIED;
- 2. Plaintiff’s motion for appointment of counsel is DENIED; and
- 3. Plaintiff’s discovery requests are STRICKEN from the record.

IT IS SO ORDERED.

Dated: February 5, 2015


UNITED STATES MAGISTRATE JUDGE