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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RASHEED HILSON, SR.,
Plaintiff,
v.
JESSE ARNETT, et al.,
Defendants.

Case No. 1:15-cv-01240-DAD-MJS (PC)
**ORDER GRANTING MOTION FOR
EXTENSION OF TIME**
**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**
**FINDINGS AND RECOMMENDATION TO
DENY REQUEST FOR INJUNCTIVE RELIEF**
(ECF NO. 59)
FOURTEEN DAY OBJECTION DEADLINE
**CLERK TO SEND PLAINTIFF NOTICE OF
CHANGE OF ADDRESS FORM**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. This matter proceeds on Plaintiff's Eighth Amendment excessive force claims against Defendants Arnett, Gamboa, Potzernitz, Flores, and CO Jane Doe, and an Eighth Amendment failure to protect claim against Defendant Marsh. (ECF Nos. 16, 18, 54, 57.)

1 Before the Court is Plaintiff's February 20, 2018 motion requesting an extension
2 of the discovery cut-off. (ECF No. 59.) He also there raises additional issues which will
3 be addressed below. Defendants filed no response and the time for doing so has
4 passed. The matter is submitted. Local Rule 230(/).

5 **I. Change of Address**

6 Plaintiff's request for extension of time is based on his contention that the Court
7 failed to update his address for nearly a year, and that failure has interfered with his
8 ability to conduct discovery.

9 At the initiation of this case, Plaintiff was advised of the requirement to keep the
10 Court apprised of his current address. Upon review of the docket, it appears that Plaintiff
11 filed, on March 20, 2017, a motion for appointment of counsel, stating that he had been
12 moved to a crisis bed at California State Prison – Los Angeles County ("CSP-LAC").
13 (ECF No. 39.) He did not specifically request a change to his address of record, and his
14 address of record remained the institution where he previously had been incarcerated,
15 California Correctional Institution ("CCI"). Over the course of the following year, Plaintiff
16 filed additional motions listing his address at CSP-LAC, none of which requested a
17 change of address. Mail directed to Plaintiff at his address of record at CCI was not
18 returned to the Court.

19 It was not until December 11, 2017 that Plaintiff formally filed a Notice of Change
20 of Address, changing his address of record to CSP-LAC. (ECF No. 55.) At that time, his
21 official address was updated.

22 Plaintiff is aware of the procedure for updating his address, having filed a Notice
23 of Change of Address on two separate occasions. (ECF Nos. 12, 55.) The Court will
24 direct the Clerk's Office to send Plaintiff additional change of address form. To prevent
25 further delays in Plaintiff's receipt of Court mail, Plaintiff should utilize this form for future
26 address changes or, at the very least, should title his submission as "Notice of Change
27 of Address."
28

1 **II. Motion for Extension of Time**

2 As stated, Plaintiff's request for extension of time is based on his contention that
3 the Court failed to update his address and thereby interfered with his ability to conduct
4 discovery. It appears that the Court's discovery and scheduling order was served on
5 Plaintiff at CCI, but that Plaintiff was then at CSP-LAC. Again, the mail served on Plaintiff
6 at CCI was not returned to the Court. It therefore is unclear whether or when Plaintiff
7 may have received the Court's discovery and scheduling order.

8 In light of these circumstances, and the Court having previously granted an
9 extension to Defendants to conduct Plaintiff's deposition, the Court will grant Plaintiff's
10 unopposed motion to extend the discovery cut-off by ninety days.

11 **III. Appointment of Counsel**

12 Plaintiff requests the appointment of counsel.

13 Plaintiff does not have a constitutional right to appointed counsel in this action,
14 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require an
15 attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1), Mallard v. United
16 States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). In
17 certain exceptional circumstances the court may request the voluntary assistance of
18 counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525. However, without a
19 reasonable method of securing and compensating counsel, the court will seek volunteer
20 counsel only in the most serious and exceptional cases. In determining whether
21 "exceptional circumstances exist, the district court must evaluate both the likelihood of
22 success of the merits [and] the ability of the [plaintiff] to articulate his claims *pro se* in
23 light of the complexity of the legal issues involved." Id. (internal quotation marks and
24 citations omitted).

25 In the present case, the court does not find the required exceptional
26 circumstances. Even if it is assumed that plaintiff is not well versed in the law and that he
27 has made serious allegations which, if proved, would entitle him to relief, his case is not
28 exceptional. This court is faced with similar cases almost daily. Further, at this early

1 stage in the proceedings, the court cannot make a determination that plaintiff is likely to
2 succeed on the merits, and based on a review of the record in this case, the court does
3 not find that plaintiff cannot adequately articulate his claims. Id.

4 For the foregoing reasons, plaintiff's motion for the appointment of counsel will be
5 denied without prejudice.

6 **IV. Injunctive Relief**

7 Plaintiff requests an injunction against the California Department of Corrections
8 and, particularly, staff at CSP-LAC, preventing retaliation and harassment. He asks the
9 Court to issue a restraining order against anyone who does harass him.

10 The Court does not have jurisdiction to order injunctive relief which would require
11 directing parties not before the Court to take action. Zepeda v. United States Immigration
12 & Naturalization Serv., 753 F.2d 719, 727 (9th Cir. 1985) ("A federal court may issue an
13 injunction if it has personal jurisdiction over the parties and subject matter jurisdiction
14 over the claim; it may not attempt to determine the rights of persons not before the
15 court."). CDCR and CSP-LAC are not parties to this action. This case does not confer on
16 the Court jurisdiction over any individuals employed at CSP-LAC.

17 Additionally, it is generally appropriate to grant a preliminary injunction only for
18 "intermediate relief of the same character as that which may be granted finally." De
19 Beers Consol. Mines v. U.S., 325 U.S. 212, 220 (1945); see Johnson v. Couturier, 572
20 F.3d 1067, 1084 (9th Cir. 2009) (concluding that preliminary injunction at issue did not
21 deal with a wholly unrelated matter). A court should not issue an injunction when the
22 relief sought is not of the same character, and the injunction deals with a matter lying
23 wholly outside the issues in the underlying action. De Beers, 325 U.S. at 220. Here, the
24 underlying claim involves claims of excessive force and failure to protect, not
25 harassment or retaliation.

26 Injunctive relief is not appropriate or available to Plaintiff on these facts. The Court
27 will recommend that Plaintiff's request be denied.

28

1 **V. Conclusion, Order, and Recommendation**

2 Based on the foregoing, it is HEREBY ORDERED that:

- 3 1. Plaintiff's request to extend the discovery cut-off is granted;
- 4 2. Plaintiff is granted an additional ninety days from the date of service of this
- 5 order in which to conduct discovery;
- 6 3. Plaintiff's request for the appointment of counsel is denied; and
- 7 4. The Clerk of Court is directed to send Plaintiff a blank change of address
- 8 form.

9 Additionally, it is HEREBY RECOMMENDED that Plaintiff's request for injunctive

10 relief be DENIED.

11 These findings and recommendations will be submitted to the United States

12 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C.

13 § 636(b)(1). Within fourteen (14) days after being served with the findings and

14 recommendations, the parties may file written objections with the Court. The document

15 should be captioned "Objections to Magistrate Judge's Findings and Recommendation."

16 A party may respond to another party's objections by filing a response within fourteen

17 (14) days after being served with a copy of that party's objections. The parties are

18 advised that failure to file objections within the specified time may result in the waiver of

19 rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter

20 v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21 IT IS SO ORDERED.

22

23 Dated: April 2, 2018

24 /s/ Michael J. Seng
25 UNITED STATES MAGISTRATE JUDGE