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

RASHAD KING,  
Plaintiff,  
v.  
S. HOLLAND, et al.,  
Defendants.

Case No. 1:15-cv-01885-DAD-BAM (PC)  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DENIAL OF REQUEST  
FOR ORDER OR SUBPOENA IN  
OBTAINING AFFIDAVIT STATEMENT  
FROM WITNESS  
(ECF No. 39)

Plaintiff Rashad King (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. This action proceeds on Plaintiff’s complaint, filed on December 18, 2015, for violations of the Eighth Amendment against Defendants Holland and Duncan for excessive force during the first escort; Defendants Holland, Duncan, and Solis for excessive force in the second cell; against Defendant Tingley for failing to intervene in the attack by Defendants Holland, Solis, and Duncan in the second cell; and an Eighth Amendment sexual assault against Defendant Holland. Plaintiff is currently incarcerated at High Desert State Prison.

On April 17, 2017, Plaintiff filed the instant request for an order or subpoena requiring Warden M. E. Spearman at High Desert State Prison, a nonparty to this action, to allow Plaintiff to obtain an affidavit from Inmate Crawford (CDCR # V98835), who is currently incarcerated at Pelican Bay State Prison. Plaintiff seeks for the Court to require Warden Spearman to allow

1 Plaintiff to confidentially or legally correspond with Inmate Crawford. The Court will construe  
2 the request as one seeking a preliminary injunction.

### 3 **I. Legal Standard**

4 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter  
5 v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008) (citation omitted). “A plaintiff seeking a  
6 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to  
7 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his  
8 favor, and that an injunction is in the public interest.” Id. at 20 (citations omitted). An injunction  
9 may only be awarded upon a clear showing that the plaintiff is entitled to relief. Id. at 22 (citation  
10 omitted). In cases brought by prisoners involving conditions of confinement, any preliminary  
11 injunction “must be narrowly drawn, extend no further than necessary to correct the harm the  
12 court finds requires preliminary relief, and be the least intrusive means necessary to correct the  
13 harm.” 18 U.S.C. § 3626(a)(2).

14 Federal courts are courts of limited jurisdiction and in considering a request for  
15 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary matter, it  
16 have before it an actual case or controversy. City of L.A. v. Lyons, 461 U.S. 95, 101–02 (1983);  
17 Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S.  
18 464, 471 (1982). If the Court does not have an actual case or controversy before it, it has no  
19 power to hear the matter in question. Id. Additionally, district courts lack the authority to issue  
20 an injunction directed at an entity or individual that is not a party before it. Zenith Radio Corp. v.  
21 Hazeltine Research, Inc., 395 U.S. 100, 112 (1969); Zepeda v. U.S. INS, 753 F.2d 719, 727 (9th  
22 Cir. 1983).

### 23 **II. Discussion**

24 Plaintiff asserts that he “is representing his self in the case pro per and doesn’t have the  
25 assistance of counsel to obtain information it will be fair in issuing an order/subpoena, due to  
26 prison official will not allow correspondance.” (ECF No. 39, p. 1) (errors in original). While  
27 prisoners have a constitutional right to send and receive mail, it is limited by the state’s interest in  
28 maintaining safety and security in its prisons. Turner v. Safley, 482 U.S. 78, 89 (1987). Inmates

1 in California’s prison system may correspond with other inmates “provided those persons meet  
2 the criteria of approval of no known [Security Threat Group] affiliation, or involvement with a  
3 known terrorist group or racketeering enterprise.” Cal. Code Regs. tit. 15, § 3139(b) (2017). The  
4 same regulation gives a warden authority to restrict an inmate in another facility from  
5 communicating with inmates in his custody. “[A]pproval to correspond may be revoked due to  
6 disciplinary violations involving correspondence between the inmates/parolees or as a result of  
7 classification action based on safety and security.” Id. § 3139(d). “If an inmate’s request to  
8 correspond with another inmate/parolee is denied, the [Correctional Counselor I] shall advise the  
9 inmate in writing.” Id. § 3139(c).

10 Here, Plaintiff has not indicated whether he has attempted to use the process provided for  
11 in § 3139 and been denied. He does not submit any documentation, or otherwise describe any  
12 effort he has made to request correspondence with Inmate Crawford, nor does he provide any  
13 reason why such request was denied. He merely states that the prison official will not allow  
14 correspondence. Thus, even if the Court had the jurisdiction to issue an injunction against Warden  
15 Spearman, who is not a party to this action, Plaintiff has not met the high burden of showing  
16 irreparable harm in the absence of injunctive relief or that the balance of equities tips in favor of  
17 an injunction here. As a result, the Court recommends that Plaintiff’s request be denied. Plaintiff  
18 is encouraged to avail himself of the process provided for in § 3139 to request to correspond with  
19 Inmate Crawford, to the extent he has not yet done so.

### 20 **III. Conclusion**

21 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff’s request for an order or  
22 subpoena in obtaining affidavit statement from witness be DENIED.

23 These Findings and Recommendations will be submitted to the United States District  
24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
25 **fourteen (14) days** after being served with these Findings and Recommendations, the parties may  
26 file written objections with the Court. The document should be captioned “Objections to  
27 Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file  
28 objections within the specified time may result in the waiver of the “right to challenge the

1 magistrate's factual findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.  
2 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

Dated: May 2, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE