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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CRAIG SIMONSON,  
  
                                Plaintiff,  
  
                                v.  
  
T. SINGH, et. al.,  
  
                                Defendants.

**CASE NO. 1:16-cv-00126-LJO-MJS (PC)**  
  
**ORDER DENYING PLAINTIFF’S MOTION FOR:**  
**(1) APPOINTMENT OF A DISTRICT JUDGE**  
**(2) APPOINTMENT OF COUNSEL**  
  
**FINDINGS AND RECOMMENDATIONS DENYING PLAINTIFF’S REQUEST FOR A TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTIVE RELIEF**  
  
**(ECF No. 6)**  
  
**FOURTEEN DAY OBJECTION DEADLINE**

Plaintiff is a county jail inmate proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff has declined Magistrate Judge jurisdiction. (ECF No. 13) His case proceeds against Defendant T. Singh for excessive force in violation of the Eighth Amendment. (ECF No. 10.) His complaint is pending service. (ECF No. 22.)

- Plaintiff seeks a number of Court orders (ECF No. 6):
1. The appointment of a District Judge;
  2. The appointment of counsel;

- 1 3. A temporary restraining order preventing retaliatory actions by Sheriff's
- 2 deputies;
- 3 4. An injunction preventing the tampering with Plaintiff's legal mail; and
- 4 5. An order directing Plaintiff's transfer to a different facility.

5 **I. Appointment of District Judge**

6 Plaintiff already submitted a notice declining Magistrate Judge jurisdiction, and a  
7 District Judge has been assigned to this case. (ECF No. 14.) Therefore, Plaintiff's request  
8 for the appointment of a District Judge is denied as moot.

9 **II. Appointment of Counsel**

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

22 In the present case, the Court does not find the required exceptional  
23 circumstances. Even if it is assumed that Plaintiff is not well versed in the law and that  
24 he has made serious allegations which, if proven, would entitle him to relief, his case is  
25 not exceptional. This Court is faced with similar cases almost daily. Further, at this early  
26 stage in the proceedings, the Court cannot make a determination that Plaintiff is likely to  
27 succeed on the merits, and based on a review of the record in this case, the Court does  
28 not find that Plaintiff cannot adequately articulate his claims. Id. The Court will of course

1 afford Plaintiff a degree of leniency in his filings in light of the fact that he is incarcerated  
2 and proceeding pro se. See Blaisdell v. Frappiea, 729 F.3d 1237, 1241 (9th Cir. 2013)  
3 (“Courts in this circuit have an obligation to give a liberal construction to the filings of pro  
4 se litigants, especially when they are civil rights claims filed by inmates.”).

5 Plaintiff’s request for appointment of counsel will therefore be denied.

### 6 **III. Temporary Restraining Order**

7 Plaintiff seeks a restraining order against the officers named in his complaint and  
8 “others.”

9 The purpose of a temporary restraining order is to preserve the status quo before  
10 a preliminary injunction hearing may be held; its provisional remedial nature is designed  
11 merely to prevent irreparable loss of rights prior to judgment. Sierra On-Line, Inc. v.  
12 Phoenix Software, Inc., 739 F.2d 1415, 1422 (9th Cir. 1984). Under Federal Rule of Civil  
13 Procedure 65, a temporary restraining order may be granted only if “specific facts in an  
14 affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or  
15 damage will result to the movant before the adverse party can be heard in opposition.”  
16 Fed. R. Civ. P. 65(b)(1)(A). The analysis for a temporary restraining order is substantially  
17 identical to that for a preliminary injunction, Stuhlberg Intern. Sales Co., Inc. v. John D.  
18 Brush and Co., Inc., 240 F.3d 832, 839 n.7 (9th Cir. 2001).

19 “A preliminary injunction is an extraordinary remedy never awarded as of right,”  
20 Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24 (2008) (citation  
21 omitted). “A plaintiff seeking a preliminary injunction must establish that he is likely to  
22 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
23 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in  
24 the public interest.” Id. at 20 (citations omitted). Alternatively, a preliminary injunction  
25 may issue where the plaintiff demonstrates the existence of serious questions going to  
26 the merits and the hardship balance tips sharply toward the plaintiff, assuming the other  
27 two elements of the Winter test are also met. Alliance for the Wild Rockies v. Cottrell,  
28 632 F.3d 1127, 1131-32 (9th Cir. 2011). Under either formulation of the principles,

1 preliminary injunctive relief should be denied if the probability of success on the merits is  
2 low. See Johnson v. Cal. State Bd. of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995)  
3 (even if the balance of hardships tips decidedly in favor of the moving party, it must be  
4 shown as an irreducible minimum that there is a fair chance of success on the merits).

5 Here, Plaintiff has not established that he is entitled to relief. The harm he wishes  
6 to prevent (retaliatory acts) has not be shown to be real, it is speculative, and even if real,  
7 it is not shown to be irreparable. Furthermore, Plaintiff has not shown that he is likely to  
8 succeed on the merits of this, that the balance of equities tips in his favor, or that an  
9 injunction is in the public interest. The Court will recommend denying Plaintiff's request  
10 for a temporary restraining order.

### 11 **III. Mail Tampering and Facility Transfer**

12 Federal courts are courts of limited jurisdiction and in considering a request for  
13 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary  
14 matter, it have before it an actual case or controversy. City of Los Angeles v. Lyons, 461  
15 U.S. 95, 102, 103 S.Ct. 1660, 1665 (1983); Valley Forge Christian Coll. v. Ams. United  
16 for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982). If the Court does not  
17 have an actual case or controversy before it, it has no power to hear the matter in  
18 question. Id. Requests for prospective relief are further limited by 18 U.S.C. §  
19 3626(a)(1)(A) of the Prison Litigation Reform Act, which requires that the Court find the  
20 "relief [sought] is narrowly drawn, extends no further than necessary to correct the  
21 violation of the Federal right, and is the least intrusive means necessary to correct the  
22 violation of the Federal right." Plaintiff's request for officials to stop tampering with his  
23 mail and transfer him to a different facility extend beyond the scope of relief sought in this  
24 suit.

25 Further, the pendency of this action does not give the Court jurisdiction over prison  
26 officials in general or over the issues raised in Plaintiff's motion. Summers v. Earth Island  
27 Institute, 555 U.S. 488, 492-93 (2009); Mayfield v. United States, 599 F.3d 964, 969 (9th  
28 Cir. 2010). The Court's jurisdiction is limited to the parties in this action and to the

1 cognizable legal claims upon which this action is proceeding. Summers, 555 U.S. at 492-  
2 93; Mayfield, 599 F.3d at 969.

3 Plaintiff is not precluded from attempting to state cognizable claims in a new action  
4 if he believes his civil rights are being violated beyond his pleadings in this action. This  
5 action is simply not the proper vehicle for conveyance of the relief Plaintiff seeks. The  
6 Court will recommend denying Plaintiff's requests.

7 **IV. Conclusion**

8 Based on the foregoing, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's request for the appointment of a District Judge is DENIED as moot;  
10 and  
11 2. Plaintiff's request for the appointment of counsel is DENIED.

12 Furthermore, IT IS HEREBY RECOMMENDED that:

- 13 3. Plaintiff's request for a temporary restraining order be DENIED; and  
14 4. Plaintiff's request for an injunction preventing the tampering with his mail and  
15 directing his transfer to a different facility be DENIED.

16 These Findings and Recommendations are submitted to the United States District  
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
18 **fourteen** (14) days after being served with these Findings and Recommendation, Plaintiff  
19 may file written objections with the Court. Such a document should be captioned  
20 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file  
21 objections within the specified time may result in the waiver of rights on appeal.  
22 Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
23 F.2d 1391, 1394 (9th Cir. 1991)).

24  
25 IT IS SO ORDERED.

26 Dated: January 15, 2017

27 /s/ Michael J. Seng  
28 UNITED STATES MAGISTRATE JUDGE

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