

1 Plaintiff did not timely amend his complaint, and on March 2, 2018, an order issued requiring
2 Plaintiff to show cause why this action should not be dismissed for failure to obey a court order and
3 failure to state a claim. (ECF No. 10.) On March 23, 2018, Plaintiff filed a motion for an extension of
4 time to file his amended complaint. (ECF No. 11.) On March 27, 2018, the order to show cause was
5 discharged and Plaintiff was ordered to file an amended complaint within twenty-one days. (ECF No.
6 12.)

7 Plaintiff filed a first amended complaint on April 9, 2019. (ECF No. 13.) The complaint was
8 screened on August 29, 2018. (ECF No. 17.) Plaintiff was found to have stated a cognizable claim
9 against Defendants Usher, Rimbach, German, Ulit, Spaeth and Sao for violation of the Eighth
10 Amendment, in their individual capacities. (Id. at 6.) Plaintiff was ordered to either file a second
11 amended complaint or to notify the court that he was willing to proceed on the claims that had been
12 found to be cognizable. (Id. at 7.) On September 19, 2018, Plaintiff filed objections to the screening
13 order. (ECF No. 18.)

14 On September 21, 2018, findings and recommendations were filed recommending dismissing
15 certain claims and defendants from this action based on Plaintiff's failure to state a claim. (ECF No.
16 19.) Plaintiff filed objections to the findings and recommendations on October 18, 2018. (ECF No.
17 20.) On December 4, 2018, District Judge Dale A. Drozd adopted the findings and recommendations.
18 (ECF No. 21.)

19 On December 5, 2018, findings and recommendations issued recommending revoking
20 Plaintiff's *in forma pauperis* status in this action. (ECF NO. 22.) Plaintiff filed objections to the
21 findings and recommendations and a motion for a preliminary injunction on December 26, 2018.
22 (ECF Nos. 23, 24.) On February 5, 2019, findings and recommendations were filed recommending
23 denying Plaintiff's motion for a preliminary injunction. (ECF No. 25.) On September 12, 2019, Judge
24 Drozd declined to adopt the findings and recommendations recommending revoking Plaintiff's *in*
25 *forma pauperis* status and denied Plaintiff's motion for a preliminary injunction. (ECF No. 29.)

26 On September 16, 2019, an order was filed finding service of the complaint appropriate and the
27 United States Marshal was ordered to serve Defendants. (ECF No. 30.) On December 4, 2019,
28 Defendants Usher, Rimbach, German, Ulit, Spaeth, and Sao consented to the jurisdiction of the

1 magistrate judge and this matter was reassigned to the undersigned for all purposes. (ECF Nos. 34,
2 35.)

3 On December 23, 2019, Defendants filed a motion to dismiss the first amended complaint on
4 the ground that they are entitled to qualified immunity. (ECF No. 36.) On this same date, Plaintiff
5 filed a motion for terminating and evidentiary sanctions. (ECF No. 37.) Plaintiff filed a motion to
6 amend the complaint and an opposition to the motion to dismiss on January 2, 2020. (ECF No. 38,
7 39.) On January 9, 2020, Defendants filed a reply to Plaintiff's opposition to the motion to dismiss.
8 (ECF No. 41.) On January 10, 2020, Defendants filed an opposition to Plaintiff's motion for
9 terminating and evidentiary sanctions. (ECF No. 42.) On January 15, 2020, Defendants filed an
10 opposition to Plaintiff's motion to file an amended complaint. (ECF No. 43.)

11 On January 21, 2020, Plaintiff filed a motion for summary judgment, a motion to strike
12 Defendants' motion to dismiss, a request for judicial notice, and a motion for a protective order and
13 preliminary injunction. (ECF Nos. 44-48.) On January 27, 2020, Plaintiff filed six motions for
14 summary judgment, a request for judicial notice, and a second motion for leave to file a second
15 amended complaint. (ECF Nos. 49-56.) On February 20, 2020, orders issued denying Plaintiff's
16 motions for summary judgment as premature and denying without prejudice his two motions for leave
17 to file a second amended complaint. (ECF Nos. 58, 59.) Plaintiff was ordered to file a motion for
18 leave to file second amended complaint that included a copy of the proposed amended complaint
19 within thirty days. (ECF No. 59 at 3.)

20 On April 7, 2020, an order was filed denying Plaintiff's motion for terminating and evidentiary
21 sanctions and his motion for a protective order and preliminary injunction and restraining order. (ECF
22 No. 60.) Plaintiff did not file a timely motion for leave to file a second amended complaint.

23 On April 15, 2020, the Court denied Defendants' motion to dismiss. (ECF No. 61.)

24 On May 5, 2020, Defendants filed an answer to the complaint. (ECF No. 65.) On May 12,
25 2020, the Court issued the discovery and scheduling order. (ECF No. 66.)

26 On June 2, 2020, the Court set the case for settlement conference before Magistrate Judge
27 Barbara A. McAuliffe, and stayed the case for 120 days. (ECF No. 71.)

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1 The settlement conference was conducted on September 22, 2020, but the parties did not reach
2 a settlement agreement. (ECF No. 79.)

3 On September 23, 2020, the Court lifted the stay of the proceedings and amended the
4 discovery and scheduling order. (ECF No. 80.)

5 As previously stated, on September 28, 2020, Plaintiff filed a motion for declaratory relief,
6 request for preliminary injunction, request for judicial notice, and motion for evidentiary and
7 terminating sanctions. (ECF Nos. 81, 82, 83, 84.)

8 II.

9 DISCUSSION

10 A. Motion for Declaratory Relief

11 Plaintiff seeks declaratory judgment pursuant to Federal Rule of Civil Procedure
12 57, which “governs the procedures for obtaining a declaratory judgment under 28 U.S.C. § 2201.”
13 Fed. R. Civ. P. 57. Section 2201 provides for the “creation of a remedy” in actions for declaratory
14 judgment involving cases “of actual controversy” within the court’s jurisdiction. 28 U.S.C. § 2201(a).
15 That provision instructs that, “upon the filing of an appropriate pleading, [the court] may declare the
16 rights and other legal relations of any interested party seeking such declaration, whether or not further
17 relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or
18 decree and shall be reviewable as such.” *Id.* Rule 57 provides that “[t]he existence of another
19 adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court
20 may order a speedy hearing of a declaratory-judgment action.” Fed. R. Civ. P. 57.

21 Declaratory relief is discretionary in nature. Government Employees Ins. Co. v. Dizon, 133
22 F.3d 1220, 1223 (9th Cir.1998) (en banc) (citation omitted) (“The Act gave the federal courts
23 competence to make a declaration of rights; it did not impose a duty to do so.”). Rule 57 of the
24 Federal Rules of Civil Procedure provides in relevant part that “[the existence of another adequate
25 remedy does not preclude a judgment for declaratory relief *in cases where it is appropriate.*” (Italics
26 added). In exercising its discretion to decide whether to grant declaratory relief, the court must
27 consider, among other factors, whether a declaratory judgment will serve a useful purpose. See Wilton
28 v. Seven Falls Co., 515 U.S. 277, 288 (1995).

1 In this instance, Plaintiff contends that declaratory judgment is warranted because the only
2 actual controversy is the amount of compensatory and punitive damages, and Defendants have failed
3 to engage in discovery. (ECF No. 81 at 2.) However, Plaintiff's "Rule 57 Motion" for a declaratory
4 ruling or judgment is clearly premature as the Court just issued the amended discovery and scheduling
5 order on September 23, 2020. (ECF No. 80.) Further, to the extent Plaintiff seeks a dispositive
6 rulings on either the facts or the law on issues purportedly raised by declaratory-relief-related issues,
7 those issues have not yet been properly brought before the court or resolved by admission of the
8 Defendants, stipulation of the parties, or a duly noticed motion filed in accordance with the yet to be
9 issued scheduling order. There is simply no basis to grant Plaintiff's Rule 57 motion for declaratory
10 judgment. Accordingly, Plaintiff's motion shall be denied.

11 **B. Request for Preliminary Injunction**

12 Plaintiff seeks a preliminary injunction to prevent Defendants from "placing an undue burden
13 upon [Plaintiff] by moving the court for either for summary judgment or for additional discovery that
14 is unnecessary in order to procrastinate and prevent plaintiff from seeking redress and relief he is
15 entitled too." (ECF No. 82 at 2-3.) Plaintiff also seeks a stay of the proceeding pending a ruling on
16 his request for declaratory judgment.¹ (*Id.* at 3.) There is no basis to issue a preliminary injunction in
17 this case.

18 The purpose of a temporary restraining order or a preliminary injunction is to preserve the
19 status quo if the balance of equities so heavily favors the moving party that justice requires the court to
20 intervene to secure the positions until the merits of the action are ultimately determined. University of
21 Texas v. Camenisch, 451 U.S. 390, 395 (1981). "A plaintiff seeking a preliminary injunction [or
22 temporary restraining order] must establish that he is likely to succeed on the merits, that he is likely
23 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
24 favor, and that an injunction is in the public interest." Winter v. Natural Resources Defense Council,
25 Inc., 555 U.S. 7, 20 (2008).

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28 ¹ Because the Court is denying Plaintiff's motion for declaratory judgment, there is no basis to stay the action.

1 “[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be
2 granted unless the movant, *by a clear showing*, carries the burden of persuasion.” Mazurek v.
3 Armstrong, 520 U.S. 968, 972 (1997) (quotations and citations omitted) (emphasis in original). A
4 party seeking a temporary restraining order or preliminary injunction simply cannot prevail when that
5 motion is unsupported by evidence.

6 As stated above, on September 23, 2020, the Court amended the discovery and scheduling
7 order, setting the deadline for completion of all discovery for May 24, 2021. (ECF No. 80.)
8 Plaintiff’s contention that he has been deprived of the opportunity to conduct discovery is unfounded.
9 In setting this case for a settlement conference, the Court noted that “[t]he parties shall not engage in
10 formal discovery, but may engage in informal discovery to prepare for the settlement conference.”
11 (ECF No. 71 at 2:16-17.) On September 23, 2020, the Court reopened formal discovery which allows
12 the parties to propound discovery requests and file any motion to compel on or before May 24, 2021.
13 (ECF No. 80.) Therefore, contrary to Plaintiff’s contention, he has not been deprived of the
14 opportunity to engage in discovery with Defendants prior to filing of any dispositive motion. In
15 addition, Plaintiff is advised that the parties are free to engage in settlement negotiations among
16 themselves without court intervention. Accordingly, Plaintiff’s motion for a preliminary injunction
17 shall be denied.

18 **C. Request for Judicial Notice**

19 Plaintiff seeks judicial notice of the following documents: (1) Defendants’ answer to the
20 complaint; (2) the civil docket sheet; (3) order referring the case for settlement conference; and (4)
21 order denying Defendants’ motion to dismiss. (ECF No. 83.)

22 Rule 201(d) of the Federal Rules of Evidence governs judicial notice. The content of records
23 and reports of administrative bodies are proper subjects for judicial notice under Rule 201(d).
24 Interstate Natural Gas Co. v. S. Cal. Gas Co., 209 F.2d 380, 385 (9th Cir.1953). A court may also take
25 judicial notice of the contents of public records. Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th
26 Cir. 2001). However, “[c]ourts may only take judicial notice of adjudicative facts that are not subject
27 to reasonable dispute.” United States v. Ritchie, 342 F.3d 903, 908-09 (9th Cir. 2003) (citing Fed. R.
28 Evid. 201(b)). “Facts are indisputable, and thus subject to judicial notice, only if they either ‘generally

1 known'...or capable of accurate and ready determination by resort to sources whose accuracy cannot
2 be questioned[.]” Id. at 909.

3 Plaintiff’s request for judicial notice of court orders and filings placed on the court’s docket in
4 this case is unnecessary and shall be denied.

5 **D. Motion for Evidentiary, Monetary, and Terminating Sanctions**

6 Plaintiff seeks evidentiary, monetary, and terminating sanctions under Federal Rule of Civil
7 Procedure 37.

8 Rule 37 of the Federal Rules of Civil Procedures provides for sanctions for the failure to make
9 discovery disclosures or to cooperate in discovery. Upon finding a violation of the discovery rules, a
10 court may “bar the disobedient party from introducing certain evidence, or it may direct that certain
11 facts shall be ‘taken to be established for the purposes of the action...’” Roadway Exp., Inc. v. Piper,
12 447 U.S. 752, 763 (1980). Rule 37 also permits the court to issue sanctions such as striking claims
13 from the pleadings or to dismiss the action or issue a judgment by default against the disobedient
14 party. Roadway Exp., Inc., 447 U.S. at 763.

15 Plaintiff contends that Defendants deliberately failed to opt-out of the settlement negotiations
16 in good faith, and failed to provide Plaintiff with any informal discovery as requested. Although the
17 Court’s June 2, 2020 order allowed the parties to engage in informal discovery relating only to
18 settlement negotiations, Plaintiff has failed to demonstrate that any Defendant intentionally failed to
19 cooperate in discovery or failed to make discovery disclosures in this action necessary for good faith
20 settlement negotiations. Indeed, the Court’s June 2, 2020 order specifically stated, “[i]n issuing this
21 order, there is a presumption that this case will proceed to a settlement conference. However, if after
22 investigating Plaintiff’s claims and speaking with Plaintiff, and after conferring with others, defense
23 counsel in good faith finds that a settlement conference would be a waste of resources, defense counsel
24 may move to opt out of this early settlement conference. A written notice to opt out must be filed within 30
25 days of the date of the issuance of this order.” (ECF No. 71 at 2:1-5.) (footnote omitted). Therefore, the
26 fact that Defendants did not opt out of the settlement conference demonstrates that they believed there was
27 a good faith chance for settlement. Further, the Court just reopened formal discovery on September 23,
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1 2020. Accordingly, the Court finds no basis for evidentiary, monetary, and/or terminating sanctions to
2 issue under Rule 37.

3 **III.**

4 **CONCLUSION AND ORDER**

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

- 6 1. Plaintiff's motion for declaratory judgment is denied;
- 7 2. Plaintiff's motion for preliminary injunction is denied;
- 8 3. Plaintiff's request for judicial notice is denied; and
- 9 4. Plaintiff's motion for sanctions is denied.

10
11 IT IS SO ORDERED.

12 Dated: September 30, 2020



13 UNITED STATES MAGISTRATE JUDGE