

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JERRY DILLINGHAM,  
Plaintiff,  
v.  
F. GARCIA,  
Defendant.

Case No. 1:18-cv-00579-NONE-EPG (PC)  
FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT PLAINTIFF’S  
EMERGENCY MOTION FOR  
ADMINISTRATIVE RELIEF BE DENIED  
(ECF NO. 122)  
OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN DAYS

Jerry Dillingham (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. On August 17, 2020, Plaintiff filed an “emergency motion for administrative relief.” (ECF No. 122). For the reasons that follow, the Court will recommend that Plaintiff’s motion be denied and that all future requests for injunctive relief that Plaintiff files be summarily denied if they are clearly unrelated to this case.

**I. BACKGROUND AND PLAINTIFF’S MOTION**

On June 29, 2020, Plaintiff filed a motion for a temporary restraining order. (ECF No. 116). Among other things, Plaintiff alleged that he was attacked by an inmate in front of the Building D5 housing unit. Three days later, after Plaintiff returned from “Medical,” Plaintiff saw that his attacker remained in the Building D5 housing unit.

District Judge Dale A. Drozd denied Plaintiff’s motion because it was unrelated to this

1 case, without prejudice to Plaintiff filing a separate action based on the allegations in the motion  
2 and seeking injunctive relief in the new case. (ECF No. 117, p. 4).

3 On August 17, 2020, Plaintiff filed an “emergency motion for administrative relief.”  
4 (ECF No. 122). Plaintiff alleges that on August 5, 2020, the inmate assisting Plaintiff finished  
5 drafting the complaint based on the allegations in his motion for a temporary restraining order.  
6 However, Plaintiff has not been able to make copies. He tried to make copies on August 10,  
7 2020, but was not allowed to. Plaintiff asks for an injunction directing prison officials to allow  
8 Plaintiff to make copies of the complaint and motion for a temporary restraining order that he  
9 intends to file, and to e-file a copy of the complaint. Plaintiff also asks the Court to prevent law  
10 library staff from forwarding the copies through the institutional mail service.

11 Finally, Plaintiff asks the Court to forward Plaintiff a copy of the docket sheets for all  
12 three of his cases.

## 13 II. LEGAL STANDARDS

14 A federal district court may issue emergency injunctive relief only if it has personal  
15 jurisdiction over the parties and subject matter jurisdiction over the lawsuit. See Murphy Bros.,  
16 Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999) (noting that one “becomes a party  
17 officially, and is required to take action in that capacity, only upon service of summons or other  
18 authority-asserting measure stating the time within which the party served must appear to  
19 defend.”). The court may not attempt to determine the rights of persons not before it. See, e.g.,  
20 Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229, 234-35 (1916); Zepeda v. INS, 753 F.2d  
21 719, 727-28 (9th Cir. 1983); see also Califano v. Yamasaki, 442 U.S. 682, 702 (1979) (injunctive  
22 relief must be “narrowly tailored to give only the relief to which plaintiffs are entitled”). Under  
23 Federal Rule of Civil Procedure 65(d)(2), an injunction binds only “the parties to the action,”  
24 their “officers, agents, servants, employees, and attorneys,” and “other persons who are in active  
25 concert or participation.” Fed. R. Civ. P. 65(d)(2)(A)-(C). “When a plaintiff seeks injunctive  
26 relief based on claims not pled in the complaint, the court does not have the authority to issue an  
27 injunction.” Pac. Radiation Oncology, LLC v. Queen's Med. Ctr., 810 F.3d 631, 633 (9th Cir.  
28 2015).

1 Requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the  
2 Prison Litigation Reform Act, which requires that the Court find that the “relief [sought] is  
3 narrowly drawn, extends no further than necessary to correct the violation of the Federal Right,  
4 and is the least intrusive means necessary to correct the violation of the Federal Right.”

5 On the merits, “[a] plaintiff seeking a preliminary injunction must establish that he is  
6 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
7 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the  
8 public interest.” Glossip v. Gross, 135 S. Ct. 2726, 2736-37 (2015) (quoting Winter v. Natural  
9 Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)). “Under *Winter*, plaintiffs must establish that  
10 irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.” Alliance  
11 for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011).

### 12 III. ANALYSIS

13 “When a plaintiff seeks injunctive relief based on claims not pled in the complaint, the  
14 court does not have the authority to issue an injunction.” Pac. Radiation Oncology, LLC, 810  
15 F.3d 631, 633 (9th Cir. 2015). As with Plaintiff’s prior request for injunctive relief, this request  
16 has no relationship to this case. As Plaintiff is seeking injunctive relief based on claims not pled  
17 in the complaint, the Court will recommend that Plaintiff’s request be denied.

18 Given that this request for injunctive relief is clearly unrelated to this case and that less  
19 than two months ago Judge Drozd informed Plaintiff he could not seek injunctive relief in this  
20 case that is unrelated to the claim proceeding in this case (ECF No. 177, p. 4), the Court will also  
21 recommend that all future requests for injunctive relief that Plaintiff files be summarily denied if  
22 they are clearly unrelated to this case.

23 The Court notes that even if this request were related to the claims in this case and even if  
24 the Court had jurisdiction over the relevant prison officials, it does not appear that Plaintiff would  
25 be entitled to injunctive relief at this time. First, Plaintiff only appears to be complaining about  
26 not being able to make copies. Plaintiff does not allege that he is unable to file documents with  
27 the Court, and was able to file this and other motions.<sup>1</sup> As to Plaintiff’s request for copies,

---

28 <sup>1</sup> Plaintiff does allege that he is afraid that mail he sends to the Court will be destroyed, but Plaintiff

1 Plaintiff finished drafting his complaint on August 5, 2020, and signed this motion on August 11,  
2 2020. In the motion Plaintiff only describes one attempt at making copies. Thus, it appears that  
3 Plaintiff only attempted to make copies once before asking the Court to intervene. There is no  
4 indication that Plaintiff attempted to utilize the remedies available at the institution prior to filing  
5 this motion.

6 Finally, in Plaintiff's emergency motion for administrative relief Plaintiff also asks the  
7 Court to forward Plaintiff a copy of the docket sheets for all three of his cases. The Court will  
8 recommend that this request be denied because Plaintiff does not explain why he needs a copy of  
9 these docket sheets, and it is not clear that Plaintiff's request has any relationship to this case.

10 **IV. RECOMMENDATION**

11 Accordingly, based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 12 1. Plaintiff's emergency motion for administrative relief be DENIED; and
- 13 2. All future requests for injunctive relief that Plaintiff files be summarily denied if  
14 they are clearly unrelated to this case.

15 These findings and recommendations are submitted to the United States district judge  
16 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
17 (14) days after being served with these findings and recommendations, Plaintiff may file written  
18 objections with the court. Such a document should be captioned "Objections to Magistrate  
19 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within  
20 the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d  
21 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22  
23 IT IS SO ORDERED.

24 Dated: August 18, 2020

25 /s/ Eric P. Gray  
26 UNITED STATES MAGISTRATE JUDGE

27  
28 presented no evidence that his outgoing mail addressed to the Court is being destroyed. The Court notes that it received the present motion, and less than three weeks ago received Plaintiff's motion for an extension of time.