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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LAFONZO R. TURNER

Plaintiff,

No. 2:09-cv-0117 WBS KJN P

vs.

SACRAMENTO COUNTY
SHERIFF, et al.

Defendant.

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action under 42 U.S.C. § 1983. Plaintiff has renewed his motion concerning restricted access to his legal materials at California State Prison-L.A. County (LAC), where he is currently housed. (Dkt. No. 79.) Plaintiff seeks return of his “legal property, books, goods, [chattels] and documents as well as archive storage to allow access to other needed material.” (Id.)

Plaintiff’s motion effectively seeks a temporary restraining order, a preliminary injunction, or both. A temporary restraining order is an extraordinary and temporary “fix” that the court may issue without notice to the adverse party if, in an affidavit or verified complaint, the movant “clearly show[s] that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.” See Fed. R. Civ. P. 65(b)(1)(A). The purpose of a temporary restraining order is to preserve the status quo pending a

1 fuller hearing. See generally, Fed. R. Civ. P. 65; see also, E.D. Cal. L. R. (“Local Rule”) 231(a).
2 It is the practice of this district to construe a motion for temporary restraining order as a motion
3 for preliminary injunction,¹ particularly when, as here, the motion has been served on the adverse
4 party.

5 A preliminary injunction represents the exercise of a far reaching power not to be
6 indulged except in a case clearly warranting it. Dymo Indus. v. Tapeprinter, Inc., 326 F.2d 141,
7 143 (9th Cir. 1964). “The proper legal standard for preliminary injunctive relief requires a party
8 to demonstrate ‘that he is likely to succeed on the merits, that he is likely to suffer irreparable
9 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an
10 injunction is in the public interest.’” Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir.
11 2009), quoting Winter v. Natural Res. Def. Council, Inc., 129 S.Ct. 365, 375-76 (2008). In cases
12 brought by prisoners involving conditions of confinement, any preliminary injunction “must be
13 narrowly drawn, extend no further than necessary to correct the harm the court finds requires
14 preliminary relief, and be the least intrusive means necessary to correct the harm.” 18 U.S.C.
15 § 3626(a)(2).

16 A plaintiff cannot, as a general matter, seek injunctive relief in a case against
17 parties who are not named as defendants in that case. “Unrelated claims against different
18 defendants belong in different suits[.]” George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).
19 However, a federal court does have the power to issue orders in aid of its own jurisdiction, 28
20 U.S.C. § 1651(a), and to prevent threatened injury that would impair the court’s ability to grant
21 effective relief in a pending action. Sierra On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d
22 1415, 1422 (9th Cir. 1984); Gon v. First State Ins. Co., 871 F.2d 863 (9th Cir. 1989).

23 A claim that prison officials are denying an inmate access to his legal materials
24

25 ¹ See, e.g., Aiello v. OneWest Bank, 2010 WL 406092, *1 (E.D. Cal. 2010) (providing
26 that “[t]emporary restraining orders are governed by the same standard applicable to preliminary
injunctions”)(citations omitted).

1 could, if proven, justify an order in furtherance of the court’s ability to adjudicate a particular
2 case. An inmate has a constitutionally protected right of meaningful access to the courts.
3 Bounds v. Smith, 430 U.S. 817, 820-21 (1977). An inmate is also entitled to adequate materials
4 for drafting submissions to the courts: “It is indisputable that indigent inmates must be provided
5 at state expense with paper and pen to draft legal documents, with notarial services to
6 authenticate them, and with stamps to mail them.” Bounds, 430 U.S. at 824-25.

7 A prisoner claiming that his right of access to the courts has been violated must
8 show that: 1) access was so limited as to be unreasonable, and 2) the inadequate access caused
9 actual injury. Vandelft v. Moses, 31 F.3d 794, 797 (9th Cir. 1994). A prisoner cannot make
10 conclusory declarations of injury, but instead must demonstrate that a non-frivolous legal claim
11 has been frustrated or impeded. To prevail, however, it is not enough for an inmate to show
12 some sort of denial. An “actual injury” is “actual prejudice with respect to contemplated or
13 existing litigation, such as the inability to meet a filing deadline or to present a claim.” Lewis v.
14 Casey, 518 U.S. 343, 348 (1996).

15 The plaintiff in this case has failed to demonstrate that he has been prejudiced by
16 any restricted access to his materials or that any of the relief he presently seeks is essential to
17 preserve the status quo in the underlying action. The docket provides ample evidence that
18 plaintiff is not being unreasonably denied access to the court. Between August and September,
19 plaintiff filed four separate motions, along with a 156 page proposed second amended complaint.
20 He has previously filed many other motions in this case and a ten-page opposition to defendants’
21 motion to dismiss, on which he prevailed. Every indication is that plaintiff has been able to
22 prosecute his case zealously. Plaintiff thus does not demonstrate that in the absence of
23 preliminary relief he will imminently suffer irreparable harm, either on the merits of the instant
24 litigation or, more fundamentally, to his person. “Speculative injury does not constitute
25 irreparable injury sufficient to warrant granting a preliminary injunction.” Caribbean Marine
26 Servs. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988) (citation omitted). Rather, a presently

1 existing actual threat must be shown, although the injury need not be certain to occur. See Zenith
2 Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 130-31 (1969); FDIC v. Garner, 125 F.3d
3 1272, 1279-80 (9th Cir. 1997), cert. denied, 523 U.S. 1020 (1998); Caribbean Marine, 844 F.2d
4 at 674.

5 For the foregoing reasons, plaintiff has failed to demonstrate that he is entitled to
6 any preliminary relief regarding his access to legal materials. Therefore, plaintiff's September
7 16, 2010 motion should be denied without prejudice. (Dkt. No. 79.)

8 IT IS HEREBY RECOMMENDED that plaintiff's September 16, 2010 motion
9 for injunctive relief concerning access to legal materials (dkt. No. 79) be denied without
10 prejudice.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
13 one days after being served with these findings and recommendations, any party may file written
14 objections with the court and serve a copy on all parties. Such a document should be captioned
15 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
16 shall be served and filed within twenty-one days after service of the objections. The parties are
17 advised that failure to file objections within the specified time may waive the right to appeal the
18 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 DATED: October 21, 2010

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23 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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