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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE B. ORTIZ,  
Plaintiff,  
v.  
J. REYNOLDS, et al.,  
Defendants.

No. 2:10-cv-1380-MCE-EFB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has filed an application for an order granting him an additional 90 days to prepare and file his pretrial statement. He has also filed a motion for a preliminary injunction. ECF Nos. 103, 109. Plaintiff claims that he has been deprived of his legal materials, which he needs to prepare the pretrial statement. The court requested defense counsel to inquire into the status of plaintiff’s access to his legal materials. ECF No. 107. As discussed below, the court has received counsel’s response. ECF No. 108. For the reasons that follow, plaintiff’s request for additional time is granted, but it is recommended that the motion for injunctive relief be denied.

**I. Motion for Extension of Time**

Defense counsel learned from the Corcoran State Prison litigation coordinator that plaintiff has some, but not all, of his legal materials and that one box of those materials may have been lost. ECF No. 108-1 (Decl. of Elliott T. Seals) ¶ 3. Defense counsel spoke to plaintiff, who

1 confirmed that he is missing one box of legal materials that contains documents which he says he  
2 needs for this case. *Id.* ¶ 4. Plaintiff was vague as to what documents he needed out of the  
3 missing box, but did say he needed the court order giving instructions for preparing the pretrial  
4 statement and some of his medical records. *Id.* Defense counsel sent the order to plaintiff, along  
5 with relevant portions of the Local Rules. *Id.* ¶ 5. Defense counsel also provided copies of  
6 defendants' first and second motions for summary judgment, the associated findings and  
7 recommendations, and a letter telling plaintiff he could get copies of the medical records he needs  
8 by submitting a certain form to correctional authorities. *Id.* ¶¶ 5-6. Defense counsel does not  
9 oppose the motion for extension of time, but asks that, should plaintiff fail to file his pretrial  
10 statement within the extended period, the action be dismissed with prejudice.

11 Because correctional personnel have lost some of plaintiff's material relating to this case,  
12 the court will grant the requested extension of time. The court admonishes plaintiff to act  
13 diligently in that period to prepare his pretrial statement. Should plaintiff fail to file his pretrial  
14 statement when due, the court may impose sanctions, including dismissal of this case. Fed. R.  
15 Civ. P. 16(f).

## 16 **II. Motion for Preliminary Injunction**

17 Plaintiff requests an injunction. ECF No. 109. According to plaintiff, he has been the  
18 subject of retaliation and harassment. He discusses the elements of retaliation and deliberate  
19 indifference causes of action and mentions a hand fracture. He does not explain how he sustained  
20 the fracture or how it relates to this case. He asks for a transfer to another prison and a copy of  
21 "all documents I filed with the court" and a copy of the rules of civil procedure.

22 A preliminary injunction will not issue unless necessary to prevent threatened injury that  
23 would impair the courts ability to grant effective relief in a pending action. *Sierra On-Line, Inc.*  
24 *v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984); *Gon v. First State Ins. Co.*, 871  
25 F.2d 863 (9th Cir. 1989). A preliminary injunction represents the exercise of a far reaching  
26 power not to be indulged except in a case clearly warranting it. *Dymo Indus. v. Tapeprinter, Inc.*,  
27 326 F.2d 141, 143 (9th Cir. 1964). In order to be entitled to preliminary injunctive relief, a party  
28 must demonstrate "that he is likely to succeed on the merits, that he is likely to suffer irreparable

1 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an  
2 injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir.  
3 2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 129 S. Ct. 365, 172 L. Ed. 2d  
4 249 (2008)). The Ninth Circuit has also held that the “sliding scale” approach it applies to  
5 preliminary injunctions—that is, balancing the elements of the preliminary injunction test, so that  
6 a stronger showing of one element may offset a weaker showing of another—survives *Winter* and  
7 continues to be valid. *Alliance for Wild Rockies v. Cottrell*, 622 F.3d 1045, 1050 (9th Cir. 2010).  
8 “In other words, ‘serious questions going to the merits,’ and a hardship balance that tips sharply  
9 toward the plaintiff can support issuance of an injunction, assuming the other two elements of the  
10 *Winter* test are also met.” *Id.* In cases brought by prisoners involving conditions of confinement,  
11 any preliminary injunction “must be narrowly drawn, extend no further than necessary to correct  
12 the harm the court finds requires preliminary relief, and be the least intrusive means necessary to  
13 correct the harm.” 18 U.S.C. § 3626(a)(2).

14 Plaintiff’s motion does not establish these elements. Instead, it primarily addresses  
15 conduct that is not a subject of this case and is thus unrelated to the merits of this case. Plaintiff’s  
16 vague allegations of harassment and oblique references to an attack by another inmate and a hand  
17 fracture are not sufficient to establish that preliminary injunctive relief is necessary. While it  
18 appears that some of plaintiff’s legal documents have been lost, it does not appear that an  
19 injunction would result in their reappearance. Rather, the court will grant plaintiff the additional  
20 time he has requested to obtain copies of the documents he needs and to reconstitute any lost  
21 research and will direct defense counsel to reserve discovery responses on plaintiff. If plaintiff  
22 seeks additional copies from the docket, he must specifically identify them and tell the court why  
23 he needs them; the court will not direct the clerk to copy tens of docket entries without any  
24 indication of their necessity. If plaintiff believes that he has been the subject of retaliation, or has  
25 suffered an attack by a fellow inmate due to correctional authorities’ deliberate indifference, or  
26 wishes financial compensation for his lost documents, he must litigate those issues in another case  
27 after exhausting them administratively.

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