

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

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

PAUL A. SHIELDS,

Plaintiff,

No. CIV S-11-3185 GGH P

vs.

KELLY L. CANNON, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner currently housed at Deuel Vocational Institution who proceeds pro se on his complaint for relief under 42 U.S.C. § 1983. Defendants have moved to dismiss the complaint (Doc. No. 13), and on April 17, 2012, plaintiff filed the following four pleadings:

- (1) An opposition to the motion to dismiss (Doc. No. 20);
- (2) A Notice of Change of Address to Deuel Vocational Institution (Doc. No. 17);
- (3) A Letter requesting that the Clerk make copies and serve parties, as plaintiff is unable to have any more copies made (Doc. No. 19); and
- (4) A “Court Order Request to Use Law Library.” (Doc. No. 18).

Plaintiff’s motion for an order requesting use of the law library reads, in its entirety:

1 Plaintiff, Paul A. Shields requests a court order to use the law library here  
2 at Deuel Vocational Institution. I been trying to research legal material to  
3 respond to the defendant's motion to dismiss my complaint. I am being  
4 denied the use of the law library for an unknown reason. I am also forced  
5 to go through extreme measures to even get copies. (see attached  
6 documents and letters.

7 Doc. No. 19 at 1.

8 There are no attachments to the request.

9 “Protective Orders”

10 The court construes plaintiff's motion for injunctive relief as a motion for a  
11 protective order. Clearly, plaintiff's motion does not seek dispositive relief on the merits of the  
12 complaint. The motion is instead addressed to procedures that the parties must utilize in  
13 litigating this case. See United States v. Flaherty, 668 F.2d 566, 586 (1st Cir. 1981): “A pretrial  
14 matter within the magistrate's jurisdiction would thus seem to be a matter unconnected to issues  
15 litigated at trial and not defined with respect to the time of trial.” Neither does the ruling herein  
16 involve injunctive relief.

17 As in nearly all rulings of magistrate judges pursuant to 28 U.S.C. § 636(b)(1)(A),  
18 parties are told to do something or not do something. For example, in typical discovery motions,  
19 parties are compelled to answer interrogatories, answer a question or produce a document despite  
20 a claim of privilege, attend a deposition at a certain time or place, be compelled to undergo a  
21 medical examination, pay costs associated with discovery in a cost-shifting sense. No one  
22 would think of asserting that such non-dispositive orders are invalid because they command or  
23 disallow a certain activity. Therefore, the fact that parties are directed in their activities by a  
24 magistrate judge cannot, without more, transform the matter at hand into an “injunctive” relief  
25 situation governed by § 636(b)(1)(B). See e.g., Grimes v. City and County of San Francisco, 951  
26 F.2d 236 (9th Cir. 1991) (magistrate judge may compel a party to pay prospective sanctions of  
\$500.00 per day during period for non-compliance with discovery orders); Rockwell Int. Inc. v.  
Pos-A-Traction Indus., 712 F.2d 1324, 1325 (9th Cir. 1983) (magistrate judge had jurisdiction to  
order witnesses to answer questions); United States v. Bogard, 846 F.,2d 563, 567 (9th Cir. 1988)

1 superseded by rule on unrelated matter, Simpson v. Lear Astronics Corp., 77 F.3d 1170, 1174  
2 (9th Cir. 1996) (magistrate judge may deny requests to see jury selection materials); New York v.  
3 United States Metals Roofing Co., 771 F.2d 796 (3rd Cir. 1985) (magistrate judge may prevent a  
4 party from releasing discovery information to the public; specifically held not to be an injunction  
5 beyond the authority of a magistrate judge); Affelt v. Carr, 628 F. Supp. 1097, 1101 (N.D. Oh.  
6 1985) (issuance of gag orders and disqualification of counsel are duties permitted to a magistrate  
7 judge.). It is only where the relief sought goes to the merits of plaintiff's actions or to complete  
8 stays of an action are orders under § 636(b)(1)(A) precluded. See e.g. Reynaga v. Camisa, 971  
9 F.2d 414 (9th Cir. 1992); compare United States Metals etc., 771 F.2d at 801 (orders which  
10 restrain or direct the conduct of the parties are not to be characterized as an appealable injunction  
11 beyond the authority of the magistrate judge unless the restraint goes to the merits of the action).  
12 In other words, a motion for injunctive relief must relate to the allegations in the complaint. If  
13 there is no relation, it is not an injunctive relief situation. A party seeking preliminary injunctive  
14 relief "must necessarily establish a relationship between the injury claimed in the party's motion  
15 and the conduct asserted in the complaint." Devose v. Herrington, 42 F.3d 470, 471 (8th  
16 Cir.1994). In other words, plaintiff must seek injunctive relief related to the merits of his  
17 underlying claim.

18           Moreover, the rule that governs interlocutory injunctions, Fed. R. Civ. P. 65, also  
19 indicates that the matters at issue have to be encompassed by the complaint, e.g., provision which  
20 allows the hearing on preliminary injunction to be accelerated into a trial on the merits,  
21 preserving the right to jury trial if otherwise appropriate, making evidence received at the hearing  
22 on preliminary injunction admissible at trial. None of the provisions would make sense if  
23 disputes outside the complaint, and on which no trial by definition will be had, could be  
24 considered as proceedings for injunctions. In addition, the standards for granting injunctions are  
25 much different than the standards applicable to protective orders. Applying established standards  
26 on the need to grant an injunction only in extraordinary circumstances, absence of legal remedy,

1 balance of hardships, irreparable harm, and so forth are foreign to resolution of discovery and  
2 other procedural disputes which crop up in the course of a litigation.

3 For the reasons discussed above, this matter may be handled by court order.

4 Analysis

5 Plaintiff asks this court to issue an order allowing him to use the law library. He  
6 argues that he has been trying to conduct research in connection with preparing his opposition to  
7 the motion to dismiss, but that he is being denied use for an unknown reason and that he is  
8 having difficulty getting copies.

9 Prisoners have a constitutional right of access to the courts. See, e.g., Lewis v.  
10 Casey, 518 U.S. 343, 346, 116 S. Ct. 2174 (1996). This right, however, “guarantees no particular  
11 methodology but rather the conferral of a capability – the capability of bringing contemplated  
12 challenges to sentences or conditions of confinement before the courts....[It is this capability]  
13 rather than the capability of turning pages in a law library, that is the touchstone” of the right of  
14 access to the courts. Lewis, 518 U.S. at 356-57.

15 In order to establish a violation of a right of access to the courts, a prisoner must  
16 establish that he or she has suffered an actual injury. Lewis, 518 U.S. at 349. An “actual injury”  
17 is “actual prejudice with respect to contemplated or existing litigation, such as the inability to  
18 meet a filing deadline or to present a claim.” Lewis, 518 U.S. at 348.

19 In this case, plaintiff’s sparse allegations provide the court with little information  
20 about the denial of access, or any injury that plaintiff may have suffered. The one injury plaintiff  
21 seems to allege – that he has experienced difficulty in preparing an opposition to the motion to  
22 dismiss – is not an actual injury, as plaintiff filed the opposition on April 17, 2012.<sup>1</sup> There is  
23 nothing in the motion to indicate that plaintiff was unable to meet a deadline or to present a  
24 claim, or suffered any other actual prejudice.

---

25 <sup>1</sup> The opposition includes a four page memorandum of points and authorities, which  
26 includes citations to federal law and to the California Penal Code.

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

Accordingly, IT IS ORDERED that plaintiff's "Court Order Request to Use Law Library" (Doc. No. 18) is denied.

DATED: May 7, 2012

/s/ Gregory G. Hollows  
UNITED STATES MAGISTRATE JUDGE

ggh:rb  
shie3185.protord