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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHERMAN D. MANNING,  
  
Plaintiff,  
  
v.  
  
M. BUNNELL, et al.,  
  
Defendants.

No. 2:12-cv-2440 MCE AC P

ORDER AND FINDINGS &  
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se who seeks relief pursuant to 42 U.S.C. § 1983. Before the court are (1) plaintiff’s allegations that his legal property has been withheld, destroyed, or stolen (ECF Nos. 211-213); (2) plaintiff’s various allegations of ongoing harassment by defendant Stratton and other corrections employees (ECF Nos. 195, 196, 198, 200, 211, 213, 214, 218); and (3) plaintiff’s motion for sanctions (ECF No. 215) and motion to compel (ECF No. 217).

Throughout this case, plaintiff has filed repeated requests for preliminary injunctive relief and court intervention in his conditions of confinement. Although plaintiff’s requests and notices have been piecemeal, unsupported, duplicative, and histrionic, and he had previously been warned that such filings would be disregarded, the court ordered defendant Stratton and the Attorney General’s Office to respond to plaintiff’s most persistent complaints, which have been construed as requests for a temporary restraining order or preliminary injunction. ECF No. 221.

1 All the defendants were also ordered to respond to plaintiff's motion for sanctions and motion to  
2 compel. ECF No. 222.

3 I. Requests for Temporary Restraining Order or Preliminary Injunction

4 A. Legal Access

5 Plaintiff filed three letters in which he alleged that correctional officers have deliberately  
6 withheld his legal property to persuade him to drop this lawsuit. ECF Nos. 211-213. Plaintiff has  
7 now filed additional documents alleging that several of his boxes of legal property have been lost  
8 or destroyed. ECF Nos. 226, 241. Plaintiff requests an order releasing his legal property. ECF  
9 Nos. 211-213. The court will construe the requests as a motion for a temporary restraining order  
10 or preliminary injunction. Plaintiff's "second request for judicial sanctions" (ECF No. 241) will  
11 be construed as both a reply in support of his motion for a temporary restraining order or  
12 preliminary injunction and as a reply in support of his previous motion for sanctions.

13 Beyond stating that C.O. Peska told him he would have to have a court order to access his  
14 legal property (ECF No. 212 at 1), plaintiff does not identify any of the individuals allegedly  
15 responsible for withholding, losing, or destroying his legal property. He does claim that the  
16 inability to access his legal property is the result of a retaliatory transfer arranged by defendant  
17 Stratton with the assistance of Associate Warden Meier. ECF No. 211.

18 The court ordered the Attorney General's Office to respond to plaintiff's allegations that  
19 he was being prevented from accessing his legal property. ECF No. 221. The response, filed by  
20 Deputy Attorney General Kelli Hammond on April 8, 2015, stated that plaintiff had been  
21 provided with part of his legal property on March 3, 2015, but that at the time of the response he  
22 was in a mental health crisis bed, where he was permitted to have a pen and paper, but was not  
23 allowed to have his legal property. ECF No. 238 at 3, 5. Plaintiff now claims that several boxes  
24 of his legal property have been lost or destroyed. ECF Nos. 226, 241. In response to plaintiff's  
25 "second request for judicial sanctions" (ECF No. 241), the defendants represent that plaintiff's  
26 boxes of legal property have not been stolen, but are in storage and will be released to him when  
27 he is discharged from the Mental Health Crisis Unit. ECF No. 251 at 1-2.

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1           B.     Harassment and Abuse

2           Plaintiff has also filed multiple documents in which he alleges that various correctional  
3 officers have physically and sexually assaulted him (ECF Nos. 213, 214, 218) and that defendant  
4 Stratton is harassing him (ECF Nos. 195, 196, 198, 200, 211). The court will construe these  
5 documents as requests for a temporary restraining order or preliminary injunction ordering  
6 defendant Stratton and the other identified individuals be kept no less than 1,000 feet from  
7 plaintiff and directing Stratton to cease interfering with his mail and medical treatment.

8           Plaintiff alleges that he was physically assaulted by C.O. Evans and that C.O. Walker  
9 drew a gun on him during a transport on February 10, 2015 (ECF No. 213 at 1; ECF No. 218 at  
10 1), and that upon arrival at his destination, he was sexually assaulted by Sgt. Brainard (ECF  
11 No. 213 at 2; ECF No. 214 at 2). He further alleges that Stratton has (1) forced him to stop taking  
12 his medications for his valley fever (ECF Nos. 195, 198); (2) threatened to have two other  
13 inmates released from administrative segregation so that they could assault plaintiff (ECF  
14 No. 196, 200); (3) interfered with his non-legal mail (ECF No. 200); and (4) orchestrated his  
15 transfer to administrative segregation (ECF No. 211).

16           Defendant Stratton and the Attorney General's Office were ordered to respond to  
17 plaintiff's allegations. ECF No. 221. In response, evidence was presented showing that on  
18 February 10, 2015, multiple officers witnessed plaintiff banging his head on the metal portion of  
19 the holding cell in the van and threatening to accuse Evans and Walker of assault. ECF No. 238  
20 at 4. Evidence was also presented showing that Sgt. Brainard had limited interaction with  
21 plaintiff, that what interaction there was did not involve any physical contact, and that after  
22 plaintiff accused Brainard of sexually assaulting him, plaintiff refused to cooperate with the  
23 investigation. Id. at 4-5.

24           With respect to the allegations against defendant Stratton, evidence was presented  
25 showing that plaintiff was placed into administrative segregation and later transferred from CSP-  
26 Sacramento when plaintiff expressed enemy concerns and refused to accept a cell partner, and  
27 that the decision was made by officers other than Stratton. Id. at 5-6. Stratton also argued that he  
28 did not have the authority to release inmates from administrative segregation and would not have

1 been able to release any inmates to assault plaintiff. Id. at 6. As for plaintiff's claims that  
2 Stratton forced him to stop taking his valley fever medication (itraconazole) and interfered with  
3 his non-legal mail, the evidence presented shows one refusal by plaintiff, on November 14, 2014,  
4 to take his itraconazole and there is no mention of Stratton. ECF No. 243-1 at 27. Stratton also  
5 argues that the itraconazole was crushed and floated and administered by medical staff. ECF No.  
6 238 at 6. While plaintiff argues that it was not crushed and floated, he does not deny that it was  
7 administered by medical staff. ECF No. 248. Plaintiff's prescription records also show that his  
8 prescription for itraconazole was renewed as recently as February 24, 2015. ECF No. 243-1 at 3.

9         Stratton further argues that the evidence shows that plaintiff was no longer housed in his  
10 unit during the times at issue. ECF No. 238 at 5. Although the response indicates that Stratton is  
11 currently a sergeant on B-Facility at CSP-Sacramento, it is not clear from the evidence what unit  
12 Stratton was assigned to during the times at issue. Stratton has previously testified he was  
13 assigned to Facility A, Buildings 5 and 8 (ECF No. 142 at 7, ¶ 1), and there is nothing in the  
14 record to indicate when his assignment changed. The evidence presented shows that plaintiff was  
15 housed at CSP-Sacramento Facility A from September 3, 2014, to January 15, 2015, and that he  
16 was not moved to administrative segregation until January 26, 2015 (ECF No. 238-1 at 3). The  
17 bed assignments print-out indicates that plaintiff was housed in Building 8 while he was housed at  
18 Facility A. ECF No. 238-1 at 3. It therefore appears that Stratton may have been assigned to the  
19 unit plaintiff was housed in for at least a portion of the time during which plaintiff alleges Stratton  
20 interfered with his non-legal mail and healthcare. See ECF Nos. 195, 198, 200. However,  
21 Stratton has previously testified that he is not involved in the processing of inmate mail (ECF  
22 No. 142 at 8, ¶ 5) and it is clear from the record that plaintiff is no longer housed at  
23 CSP-Sacramento, where Stratton is employed.

24         C.     Standards for Issuance of a Temporary Restraining Order or Preliminary  
25                 Injunction

26         A temporary restraining order is an extraordinary measure of relief that a federal court  
27 may impose without notice to the adverse party if, in an affidavit or verified complaint, the  
28 movant "clearly show[s] that immediate and irreparable injury, loss, or damage will result to the

1 movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The  
2 purpose in issuing a temporary restraining order is to preserve the status quo pending a fuller  
3 hearing. The standard for issuing a temporary restraining order is essentially the same as that for  
4 issuing a preliminary injunction. See Stuhlbarg Int’l Sales Co. v. John D. Brush & Co., 240 F.3d  
5 832, 839 n.7 (9th Cir. 2001) (stating that the analysis for temporary restraining orders and  
6 preliminary injunctions is “substantially identical”). The moving party must demonstrate that  
7 (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of  
8 preliminary relief; (3) the balance of equities tips in its favor; and (4) that the relief sought is in  
9 the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). The Ninth  
10 Circuit has held that injunctive relief may issue, even if the moving party cannot show a  
11 likelihood of success on the merits, if “serious questions going to the merits and a balance of  
12 hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction,  
13 so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the  
14 injunction is in the public interest.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127,  
15 1135 (9th Cir. 2011) (internal quotation omitted). Under either formulation of the principles,  
16 preliminary injunctive relief should be denied if the probability of success on the merits is low.  
17 See Johnson v. California State Bd. of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995)  
18 (“[E]ven if the balance of hardships tips decidedly in favor of the moving party, it must be  
19 shown as an irreducible minimum that there is a fair chance of success on the merits.” (quoting  
20 Martin v. Int’l Olympic Comm., 740 F.2d 670, 675 (9th Cir. 1984))).

21 D. Plaintiff’s Access to Legal Property

22 If a request for injunctive relief concerns an inmate’s access to the courts, a nexus  
23 between the preliminary relief and the ultimate relief sought is not required. Diamontiney v.  
24 Borg, 918 F.2d 793, 796 (9th Cir. 1990) (finding the district court did not err by failing to  
25 consider the merits of the underlying suit where preliminary injunction related to access to the  
26 courts). The constitutional right of access to the courts is only a right to bring petitions or  
27 complaints to the federal court and not a right to discover such claims or even to litigate them  
28 effectively once filed with a court. See Lewis v. Casey, 518 U.S. 343, 354 (1996); see also

1 Cornett v. Donovan, 51 F.3d 894, 898 (9th Cir. 1995). To maintain an access-to-the-courts claim,  
2 an inmate must submit evidence showing an “actual injury” resulting from the defendant’s  
3 actions. Lewis, 518 U.S. at 349. With respect to an existing case, the actual injury must be  
4 “actual prejudice . . . such as the inability to meet a filing deadline or to present a claim.” Id. at  
5 348-49. A claim for denial of access to the courts may arise from either the frustration or  
6 hindrance of an opportunity to litigate or from “the loss or inadequate settlement of a meritorious  
7 case, . . . or the loss of an opportunity to seek some particular order of relief.” Christopher v.  
8 Harbury, 536 U.S. 403, 413-14 (2002) (citations omitted).

9 Plaintiff alleges, and defendants May, Stratton, and Couch confirm, that he does not  
10 currently have access to his legal property, though he is permitted to have a pen and paper. ECF  
11 Nos. 211-213; ECF No. 238 at 3, 5. Plaintiff is not currently permitted access to his legal  
12 property because he is in a mental health crisis bed and on suicide watch. ECF No. 238 at 3, 5.  
13 Defendants have stated that plaintiff will have access to his legal property once he is discharged  
14 from the Mental Health Crisis Unit (ECF No. 251 at 1-2), but there is no indication when that  
15 may be.

16 Plaintiff’s lack of access to his legal property appears to be legitimately related to his  
17 mental health treatment. Plaintiff’s records show he was in a crisis bed from January 15, 2015 to  
18 January 26, 2015, and is currently in a crisis bed and has been since March 14, 2015. ECF  
19 No. 238-1 at 3. Though there was approximately a month and a half that plaintiff was not in a  
20 crisis bed, he appears to claim that he has been without access to his legal property since January  
21 15, 2015. ECF Nos. 211-213, 241, 245. He also claims that he has access to “recent” legal mail  
22 (ECF No. 245 at 2) and a review of the docket shows that his ability to file and respond to  
23 motions does not appear to be hampered. Since January 15, 2015, plaintiff has filed eighteen  
24 documents with the court (ECF Nos. 211-220, 223, 226, 227, 231, 241, 244, 245, 248), not  
25 including two documents he attempted to file under seal which were returned to him (see ECF  
26 No. 250). Notably, the documents filed by plaintiff have included a motion to enlarge his time to  
27 file a response to defendants’ motions for summary judgment (ECF No. 214), a motion for

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1 sanctions (ECF No. 215), a motion to compel (ECF No. 217), and an opposition to the  
2 defendants' summary-judgment motions (ECF No. 245).

3 Plaintiff's requests do not allege that he has been prevented from filing motions or missed  
4 any deadlines in this case (ECF Nos. 211-213) and the docket would belie any such claim. Nor  
5 does plaintiff identify any specific documents or pieces of evidence contained in his legal  
6 property that he requires to pursue this case. In his response to the defendants' motions for  
7 summary judgment, though plaintiff asserts that his response has been drafted without the benefit  
8 of his legal property and he is therefore relying on his memory, he does not claim that he requires  
9 any items within his legal property to assist in the preparation of or support his response (i.e.,  
10 affidavits or other supportive documents). ECF No. 245. Moreover, given that district courts are  
11 to "construe liberally motion papers and pleadings filed by pro se inmates and . . . avoid applying  
12 summary judgment rules strictly," Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010), the  
13 court will consider the record before it in its entirety when considering plaintiff's response to the  
14 defendants' motions for summary judgment.

15 With respect to plaintiff's claim that several of his legal boxes have been lost or  
16 destroyed, since plaintiff does not have access to his legal property, it is unclear how he knows  
17 his boxes have been destroyed or lost other than through reliance on inadmissible hearsay.  
18 Defendants May, Couch, and Stratton argue that plaintiff's boxes have not been destroyed or lost,  
19 but are instead in storage while he is in a crisis bed, though they provide no evidence of how  
20 many boxes are being stored. ECF No. 251. Regardless, there is no evidence that any of the  
21 defendants in this case were involved with the handling or movement of plaintiff's property when  
22 he was transferred. Even if plaintiff's property has been lost or destroyed, absent evidence that  
23 defendants in this case were involved, the court has no jurisdiction over this matter.

24 Based on the evidence currently before the court, plaintiff does not appear to have  
25 suffered any irreparable injury as a result of his current inability to access his legal property. Nor  
26 does he currently appear likely to suffer future irreparable harm in light of the fact that he has  
27 access to writing materials, is receiving his legal mail, discovery is closed, he has responded to  
28 the defendants' summary-judgment motions, and there are no other matters or deadlines currently

1 pending. However, the court recognizes that plaintiff’s continued inability to access his legal  
2 property may present an issue should the procedural posture of this case change.

3 Plaintiff’s request as it relates to his legal property should be denied without prejudice to a  
4 renewed motion showing that plaintiff has or is likely to suffer irreparable injury. Plaintiff is  
5 advised that if he files a subsequent motion related to his access to his legal supplies, he must file  
6 a single, complete motion and not pepper the court with piecemeal requests, as subsequent  
7 supplemental filings will be disregarded. Any such motion must also be supported by competent  
8 evidence.

9 E. The Court Lacks Jurisdiction

10 A district court has no authority to grant relief in the form of a temporary restraining order  
11 or preliminary injunction where it has no jurisdiction over the parties. See Ruhrgas AG v.  
12 Marathon Oil Co., 526 U.S. 574, 584 (1999) (“Personal jurisdiction, too, is an essential element  
13 of the jurisdiction of a district . . . court, without which the court is powerless to proceed to an  
14 adjudication.”) (citation and internal quotation omitted); Paccar Int’l, Inc. v. Commercial Bank of  
15 Kuwait, S.A.K., 757 F.2d 1058 (9th Cir. 1985) (vacating district court’s order granting  
16 preliminary injunction for lack of personal jurisdiction).

17 With the exception of defendant Stratton, none of the individuals identified by plaintiff in  
18 any of his filings have been served or appeared in this action. Although plaintiff alleges that  
19 these individuals have targeted him at Stratton’s behest, he provides no evidence other than  
20 speculation and inadmissible hearsay to support the allegation that they were acting “in active  
21 concert or participation” with Stratton. See Fed. R. Civ. P. 65(d)(2)(C); Zenith Radio Corp. v.  
22 Hazeltine Research, Inc., 395 U.S. 100 (1969). “A federal court may issue an injunction if it has  
23 personal jurisdiction over the parties and subject matter jurisdiction over the claim; it may not  
24 attempt to determine the rights of persons not before the court.” Zepeda v. United States  
25 Immigration Service, 753 F.2d 719, 727 (9th Cir. 1985).

26 With the exception of defendant Stratton, none of the individuals identified in the requests  
27 are within the court’s jurisdiction, and so the court cannot issue a temporary restraining order or  
28 preliminary injunction against them.



1 F. Plaintiff's Requests are Procedurally Defective

2 Federal Rule 65(b)(1) permits issuance of a temporary restraining order without notice to  
3 the adverse party only if:

4 (A) specific facts in an affidavit or a verified complaint clearly  
5 show that immediate and irreparable injury, loss, or damage will  
6 result to the movant before the adverse party can be heard in  
7 opposition; and

8 (B) the movant's attorney certifies in writing any efforts made to  
9 give notice and the reasons why it should not be required.

10 Plaintiff has not provided the certification required by this rule, and as already addressed, the  
11 majority of individuals identified by plaintiff are not defendants to this action and there is no  
12 indication they have been served with his requests. Moreover, though plaintiff has signed some  
13 of his documents under penalty of perjury, many of his documents are unsworn and he has not  
14 alleged any specific facts to demonstrate the risk of immediate and irreparable injury. With the  
15 exception of access to legal property, plaintiff's allegations are largely based on incidents that  
16 have already occurred without any indication that they will be repeated.

17 With respect to the claims that his access to the courts is being interfered with, plaintiff's  
18 numerous filings indicate that, despite his allegations, he is still able to contact the court on a  
19 regular basis to express his concerns and seek intervention in his custodial circumstances.  
20 Plaintiff has not identified any ways in which his current inability to access his legal property has  
21 interfered with his access to the court or identified any specific materials contained within his  
22 legal property that he requires. ECF Nos. 211-213.

23 If construed as a request for preliminary injunctive relief under Rule 65(a), plaintiff's  
24 requests are equally defective. As noted, plaintiff's allegations are unsupported by competent  
25 evidence and relief is sought mainly against individuals over whom the court has no jurisdiction,  
26 and who—as far as the court can determine—have had no notice of the request. To the extent  
27 defendant Stratton has received notice of the request, as will be discussed further, the request fails  
28 to address the factors governing injunctive relief and has not established that there is a significant  
threat of irreparable injury. See Oakland Tribune, Inc. v. Chronicle Publ'g Co., Inc., 762 F.2d  
1374, 1376 (9th Cir. 1985).

1           Because the court lacks jurisdiction over all identified individuals except defendant  
2 Stratton, and because plaintiff has failed to establish a significant threat of irreparable injury, his  
3 requests for a temporary restraining order or preliminary injunction should be denied.

4           G.     Plaintiff's Claims for Injunctive Relief Are Moot

5           An inmate's transfer from a prison facility generally moots claims for injunctive relief  
6 against officials of that facility. Dilley v. Gunn, 64 F.3d 1365, 1368 (9th Cir.1995); Johnson v.  
7 Moore, 948 F.2d 517, 519 (9th Cir. 1991) (per curiam). To the extent plaintiff seeks an  
8 injunction against officers at CSP-Sacramento, including defendant Stratton, his claims for relief  
9 are moot in light of his transfer to California Substance Abuse Treatment Facility and an absence  
10 of evidence that he will be subject to those conditions again. Preiser v. Newkirk, 422 U.S. 395,  
11 402-03 (1975).

12           H.     Factors Governing Injunctive Relief

13                   1. Success on the merits

14           This matter proceeds on plaintiff's second amended complaint against defendants Stratton,  
15 May, Couch, Humphries, Johnson, Ralls, and Wenker. Plaintiff presents two claims for relief:  
16 (1) retaliation for the exercise of First Amendment rights, and (2) conspiracy to retaliate for the  
17 exercise of First Amendment rights. Plaintiff alleges that because he has written and published  
18 works critical of prison life and prison officials, and because he corresponds with public officials,  
19 files grievances and pursues litigation to vindicate his rights, defendants have threatened to  
20 transfer him, brought false allegations against him, interfered with his access to his publisher and  
21 to government officials, and stolen, destroyed, hidden, delayed and otherwise interfered with his  
22 mail. Plaintiff seeks money damages, including punitive damages.

23           Plaintiff's retaliation claim against defendant Stratton has been dismissed as  
24 administratively unexhausted, and plaintiff proceeds against Stratton on the conspiracy to retaliate  
25 claim only. See ECF No. 113 (Order adopting the April 2, 2014 Findings and Recommendations  
26 (ECF No. 91)).

27           As with plaintiff's previous requests for a temporary restraining order or preliminary  
28 injunction, though he has presented dramatic allegations of past and present mistreatment, he has

1 not established a fair chance of success on the merits of the case or a serious question going to the  
2 merits of the case. Accordingly, injunctive relief should be denied even if the other factors weigh  
3 in plaintiff's favor, which they do not.

#### 4 2. Likelihood of Irreparable Harm

5 Though plaintiff makes troubling allegations against Stratton, they are supported by little  
6 more than speculation and inadmissible hearsay. Moreover, there is no evidence that plaintiff has  
7 suffered or is likely to suffer irreparable harm. The evidence shows that plaintiff was transferred  
8 into administrative segregation as a result of his claims his safety was at risk from other inmates  
9 and there is nothing to support the allegations that Stratton interfered with plaintiff's mail or  
10 medical treatment or that he threatened to have plaintiff assaulted by other inmates. Even if the  
11 court takes plaintiff's allegations against Stratton as true, the record shows that plaintiff is no  
12 longer housed at the same prison where Stratton is employed, making further harm at Stratton's  
13 hands unlikely. Plaintiff does not make a showing of irreparable harm that would support  
14 injunctive relief against Stratton.

#### 15 3. Balance of the Equities

16 Plaintiff seeks relief in the form of orders regarding defendant Stratton's duty assignment  
17 or plaintiff's housing assignment. Even if plaintiff were still housed at CSP-Sacramento, "[t]he  
18 federal courts do not sit to supervise state prisons, the administration of which is of acute interest  
19 to the States." Meachum v. Fano, 427 U.S. 215, 229 (1976) (citing Preiser v. Rodriguez, 411  
20 U.S. 475, 491-492 (1973); Cruz v. Beto, 405 U.S. 319, 321 (1972); Johnson v. Avery, 393 U.S.  
21 483, 486 (1969)). "Federal courts have traditionally been reluctant to interfere in the  
22 administration of state prisons absent a clear showing of constitutional deprivation." Gardner v.  
23 Johnson, 429 F.Supp. 432, 434 (E.D. Mich. 1977). Accordingly, the balance of equities does not  
24 lie in plaintiff's favor.

#### 25 4. Public Interest

26 The public interest does not lie in favor of a court order interfering with plaintiff's housing  
27 or the duty assignments of prison staff, especially when plaintiff is no longer housed at the prison  
28 where he was allegedly subject to the conditions at issue.

1 I. Conclusion

2 For the reasons set forth above, plaintiff's request for temporary restraining order or  
3 preliminary injunction should be denied.

4 II. Motion for Sanctions and Motion to Compel

5 Also before the court are plaintiff's motion for sanctions (ECF No. 215) and motion to  
6 compel (ECF No. 217). As ordered by the court (ECF No. 222), defendants have responded to  
7 the motions (ECF Nos. 235, 236). Plaintiff has filed additional documents that the court will  
8 construe as his reply in support of the original motions, rather than as separate motions. ECF  
9 Nos. 241, 244.

10 A. Defendants May, Couch, and Stratton's Service of Supplemental Responses

11 On March 20, 2015, counsel for defendants May, Couch, and Stratton filed a response to  
12 the court's March 13, 2015 order requiring the defendants to file proof that they timely served  
13 their supplemental responses to Interrogatory No. 3 on plaintiff. ECF No. 225. In the response,  
14 counsel explained that due to the pending motion for reconsideration, the deadline to serve the  
15 supplemental responses was removed from her calendar. Id. at 2. When the order denying the  
16 motion for reconsideration was filed, on January 27, 2015 (ECF No. 209), counsel prepared draft  
17 supplemental responses on February 2, 2015, and sent them to defendants May, Couch, and  
18 Stratton for review. ECF No. 225 at 2. Counsel believed that the responses had been signed and  
19 served the same day. Id. It was not until February 20, 2015, that she discovered the supplemental  
20 responses had not been signed and served. Id. Counsel subsequently contacted the defendants  
21 and supplemental responses were served on February 24, 2015. Id. Defendants' delay in serving  
22 their supplemental responses following the order denying the motion for reconsideration appears  
23 to be due to inadvertence and was not motivated by bad faith or a desire to delay the proceedings  
24 in this case. Moreover, plaintiff suffered no prejudice, as his time to respond to the motion for  
25 summary judgment filed by defendants May, Couch, and Stratton did not begin to run until the  
26 defendants filed their proofs of service. The court therefore finds that defendants May, Couch,  
27 and Stratton timely served their supplemental responses to Interrogatory No. 3 and that they have  
28 discharged the court's March 13, 2015 order directing them to file proof of timely service.

1           Since defendants May, Couch, and Stratton timely served their supplemental responses to  
2 Interrogatory No. 3, plaintiff's request that their motion for summary judgment be denied on the  
3 grounds that they have failed to comply with a court order is denied.

4           B.       Supplemental Responses to Interrogatories 3 and 4

5           By order filed on December 22, 2014, all defendants were ordered to provide  
6 supplemental responses to plaintiff's Interrogatory No. 3 and defendants Humphries, Johnson,  
7 Ralls, and Wenker were ordered to provide supplemental responses to Interrogatory No. 4. ECF  
8 No. 192. Defendants Humphries, Johnson, Ralls, and Wenker filed a motion for reconsideration.  
9 ECF No. 201. Defendants May, Couch, and Stratton joined the motion. ECF No. 202. The  
10 motion was denied by the District Judge on January 26, 2015. ECF No. 209. On January 30,  
11 2015, defendants Humphries, Johnson, Ralls, and Wenker served their supplemental responses.  
12 ECF No. 210. Defendants May, Couch, and Stratton served their supplemental responses on  
13 February 24, 2015. ECF No. 225.

14           Plaintiff's motion for sanctions contends that defendants May, Couch, and Stratton have  
15 not provided their supplemental discovery responses and that defendants Humphries, Johnson,  
16 Ralls and Wenker have provided untruthful responses. ECF No. 215. He requests the court  
17 sanction the defendants by denying their motions for summary judgment. Id.

18           In his subsequently filed motion to compel, plaintiff alleges that defendants May, Couch,  
19 and Stratton have provided supplemental responses, but that they are untimely, and that the  
20 responses provided by all defendants are deficient or untruthful. ECF No. 217. He requests that  
21 the court order the defendants to fully and truthfully respond and to issue unspecified sanctions.  
22 Id.

23           As the court previously noted, plaintiff's motion for sanctions is a less well-pled version  
24 of his motion to compel, and it was determined that the two motions would be read as one and the  
25 unspecified request for sanctions in the motion to compel would be interpreted as a request to  
26 deny the defendants motions for summary judgment for failure to comply with the court's  
27 December 22, 2014 order. ECF No. 222 at 3-4.

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1                   1. Interrogatory No. 3

2                   Plaintiff’s Interrogatory No. 3, posed to all defendants, requested that they “[s]tate the  
3 case name, case number and Court of every litigation matter including civil, criminal and  
4 administrative, that you have been named as a party in any capacity.”

5                   This court previously found that defendants May, Couch, and Stratton had properly  
6 responded to Interrogatory No. 3 as it related to any civil actions against them. ECF No. 192 at  
7 5-6. However, defendants May, Couch, and Stratton were ordered to “supplement their response  
8 to identify and indicate the nature of any criminal conviction or administrative action resulting in  
9 an adverse finding against them, if any.” Id. at 6. Because it was unclear whether their response  
10 addressed criminal convictions and sustained administrative actions, defendants Humphries,  
11 Johnson, Ralls, and Wenker were also ordered to supplement their responses to Interrogatory  
12 No. 3. Id. at 6-7.

13                   Plaintiff now argues that defendants May, Couch, and Stratton never sent him copies of  
14 the print-outs from their Public Access to Court Electronic Records (PACER) searches, as  
15 indicated in their original response to Interrogatory No. 3. ECF Nos. 217 at 1; ECF No. 241 at 4;  
16 ECF No. 244 at 1-2. Defendants assert that they have already provided plaintiff with the PACER  
17 print-outs on two separate occasions and have served an additional copy with their response to his  
18 motion to compel and for sanctions. ECF No. 236 at 4. Though plaintiff appears to claim he has  
19 still not received a copy of the PACER print-outs, the court will not require defendants May,  
20 Couch, and Stratton to serve copies on plaintiff yet again. Even if plaintiff has somehow not  
21 received copies of the PACER print-outs, their contents were summarized in the court’s  
22 December 22, 2014 order (ECF No. 192 at 5-6), which plaintiff clearly received.<sup>1</sup> As previously

23 ///

24 \_\_\_\_\_  
25 <sup>1</sup> Since plaintiff may not currently have access to the December 22, 2014 order, the court will  
26 summarize the relevant portion here. The PACER search results showed that defendants May and  
27 Stratton were not parties to any civil cases and defendant Couch was a party in two civil actions:  
28 Case No. 2:07-cv-1989, closed on 4/1/10 and Case No. 1:08-cv-1621, closed on 1/24/13. ECF  
No. 192 at 5-6. The court took judicial notice of the cases in which Couch was a party and  
determined that “[n]o information related to these cases could be construed as reasonably  
calculated to lead to the discovery of admissible evidence in the instant action.” Id. at 6.

1 decided, defendants May, Couch, and Stratton have properly responded to Interrogatory No. 3 as  
2 it relates to civil cases in which they were parties.

3 With respect to the supplemental responses to Interrogatory No. 3, plaintiff's only  
4 complaint appears to be with respect to defendant Stratton's response. ECF No. 241 at 4-5.  
5 Plaintiff asks the court "to view what was purged from Stratton's file and who purged it" and  
6 argues that Stratton has an arrest record. Id. Since plaintiff did not include these claims until his  
7 reply, defendant Stratton has not had an opportunity to respond. However, Stratton's response is  
8 not necessary for a fair adjudication. With respect to any arrests Stratton may or may not have on  
9 his record, defendants were ordered to supplement their response with any criminal convictions.  
10 An arrest is not a conviction, and so Stratton was not required to identify any arrests. As for the  
11 adverse action against Stratton that was purged from his personnel file (ECF No. 236-1 at 21,  
12 ¶ 8), as a practical matter, if the documentation has been purged, there is nothing left in the file  
13 for the court to view. As for the truthfulness of the response, defendants were required to identify  
14 only adverse actions that had been sustained. Stratton's response that he has only one adverse  
15 finding against him, and Deputy Attorney General Hammond's representation that a second  
16 adverse action had been purged from Stratton's personnel file, indicates that the purged adverse  
17 action was not sustained. Stratton was not required to identify adverse actions that were not  
18 sustained. The defendants have properly responded to Interrogatory No. 3 and no further  
19 responses will be required.

## 20 2. Interrogatory No. 4

21 Plaintiff's Interrogatory No. 4, also posed to all defendants, requested that they "[s]tate the  
22 date and reason for any workplace discipline that you have received as an employee of the  
23 California Department of Corrections and Rehabilitation." Defendants May, Couch, and Stratton  
24 responded that they had not been subject to any disciplinary action. The court found that it could  
25 not "compel a further response in light of the representation that there have been no disciplinary  
26 actions." ECF No. 192 at 7. Defendants Humphries, Johnson, Ralls, and Wenker objected to  
27 Interrogatory No. 4 and did not provide a response. Id. The court ordered them to identify "each  
28 adverse disciplinary action that was sustained against any of them during their CDCR

1 employment, if any exist.” Id. at 10. Humphries, Johnson, Ralls, and Wenker each responded  
2 that there were no sustained adverse disciplinary actions against them. ECF No. 217 at 16, 22,  
3 28, 34.

4 First, with respect to plaintiff’s allegations that defendants Couch and Stratton are lying  
5 about not having been subject to workplace discipline (ECF No. 217 at 2-3; ECF No. 244 at 1),  
6 the court already found that it could not “compel a further response in light of the representation  
7 that there have been no disciplinary actions” and did not require any further response to  
8 Interrogatory No. 4 from defendants May, Couch, or Stratton. ECF No. 192 at 7. Plaintiff’s  
9 allegations that these defendants are lying and that they have been subject to workplace  
10 discipline<sup>2</sup> is unsupported by anything but speculation and inadmissible hearsay, neither of which  
11 is sufficient to support a request for sanctions or to compel further answers. The same is true for  
12 plaintiff’s allegations that defendants Humphries, Johnson, Ralls, and Wenker are lying and that  
13 they were all disciplined and fired. ECF No. 215; ECF No. 217 at 2-4, 244 at 3. Plaintiff’s  
14 allegations that former Warden Virga told him these defendants were disciplined and fired is  
15 insufficient to support his request to compel further answers and request for sanctions. The  
16 defendants have represented that there have been no sustained disciplinary actions against them  
17 and the court cannot compel further responses.

### 18 3. Peter Andrist

19 Peter Andrist is plaintiff’s publisher and former co-plaintiff. See ECF No. 1. Plaintiff  
20 requests sanctions against counsel for defendants Humphries, Johnson, Ralls, and Wenker, stating  
21 that she “lied on Peter Andrist by stating that he filed a document (#130) which he did not.” ECF  
22 No. 215 at 1. Counsel avers that her representation that Andrist filed the document at ECF No.  
23 200 was based upon information contained on the court’s docket and that she was not trying to  
24 mislead plaintiff or the court. ECF No. 235 at 3-4. The documents at ECF Nos. 130 and 200  
25 both currently reflect that they were filed by plaintiff. However, both docket entries also reflect  
26 that they have been modified. Though the court is unable to tell what the original docket entry

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27 <sup>2</sup> To the extent administrative actions may be considered workplace discipline, the court finds  
28 that their inclusion in the supplemental responses to Interrogatory No. 3 are sufficient.



1 said, it is possible that either or both documents initially reflected that they were filed by Andrist.  
2 Even if they did not, any such mistaken representation counsel may have made is immaterial to  
3 the issues before the court and do not appear to have been made in bad faith or for any improper  
4 purpose. The court will not sanction counsel for what appears to be the result of a clerical error.

5 C. Conclusion

6 For the reasons set forth above, plaintiff's motion for sanctions (ECF No. 215) and motion  
7 to compel (ECF No. 217) will be denied.

8 III. Conclusion

9 Accordingly, IT IS HEREBY ORDERED that:

10 1. The responses by Deputy Attorney General Kelli Hammond on March 18, 2015 (ECF  
11 No. 224), and April 8, 2015 (ECF No. 238), have discharged the March 11, 2015 order (ECF  
12 No. 221).

13 2. The response by Deputy Attorney General Kelli Hammond on March 20, 2015 (ECF  
14 No. 225), has discharged the March 13, 2015 order directing defendants May, Couch, and  
15 Stratton to file proof of timely serving their supplemental discovery responses (ECF No. 222).

16 3. Plaintiff's motion for sanction (ECF Nos. 215, 241) and motion to compel (ECF  
17 Nos. 217, 244) are denied.

18 IT IS FURTHER RECOMMENDED that plaintiff's requests for preliminary injunctive  
19 relief (ECF Nos. 195, 196, 198, 200, 211, 212, 213, 214, 218, 226, 227) be denied for the reasons  
20 set forth above.

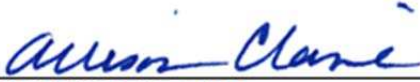
21 These findings and recommendations are submitted to the United States District Judge  
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
23 after being served with these findings and recommendations, any party may file written  
24 objections with the court and serve a copy on all parties. Such a document should be captioned  
25 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
26 objections shall be filed and served within fourteen days after service of the objections. The

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1 parties are advised that failure to file objections within the specified time may waive the right to  
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: May 15, 2015

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6 ALLISON CLAIRE  
7 UNITED STATES MAGISTRATE JUDGE  
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