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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
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10 TRACYE BENARD WASHINGTON,

11 Plaintiff,

12 v.

13 C. ESSEX, et al.,

14 Defendants.
15

No. 2:12-cv-3054 JAM DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

16 Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights
17 action under 42 U.S.C. § 1983. Plaintiff filed two motions informing the court that he is currently
18 housed at California Medical Facility in the Acute Psychiatric Program¹ and requesting the court
19 order prison officials to return him to prison. (ECF Nos. 94, 95.) Before the court is plaintiff's
20 request for injunctive relief, his motion to appoint counsel, and his request for access to his legal
21 materials and the law library.

22 **I. Trial Date**

23 At the outset, the court will clarify that the trial date was changed pursuant to the amended
24 pretrial order (ECF No. 93) filed on January 5, 2018. The court had not yet issued its amended
25 pretrial order when plaintiff wrote the motions presently before the court. The court issued an

26 ¹ A search of plaintiff's present housing status via the CDCR Inmate Locator website,
27 <http://www.inmatelocator.cdcr.ca.gov>, shows plaintiff to be currently housed at R. J. Donovan
28 Correctional Facility. However, plaintiff states he has been housed at California Medical Facility
since November 1, 2017.

1 amended pretrial order stating trial was set for May 21, 2018. Subsequently, defendant Banyas
2 filed an ex parte application (ECF No. 96) requesting the trial be continued, which was granted.
3 Plaintiff is informed the trial date has been reset for August 20, 2018. (ECF No. 97)

4 **II. Injunctive Relief**

5 Plaintiff requests that the court issue an injunction ordering prison officials to release him
6 from California Medical Facility – Acute Psychiatric Program, return him to “prison,” and give
7 him his legal documents relating to this case. (ECF No. 94, 95.)

8 A party requesting preliminary injunctive relief must show that “he is likely to succeed on
9 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
10 balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v.
11 Natural Res. Def. Council, 555 U.S. 7, 20 (2008). The propriety of a request for injunctive relief
12 hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean
13 Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

14 Alternatively, under the so-called sliding scale approach, as long as the plaintiff
15 demonstrates the requisite likelihood of irreparable harm and can show that an injunction is in the
16 public interest, a preliminary injunction may issue so long as serious questions going to the merits
17 of the case are raised and the balance of hardships tips sharply in plaintiff’s favor. Alliance for
18 the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011) (concluding that the
19 “serious questions” version of the sliding scale test for preliminary injunctions remains viable
20 after Winter).

21 The principal purpose of preliminary injunctive relief is to preserve the court’s power to
22 render a meaningful decision after a trial on the merits. See 9 Charles Alan Wright & Arthur R.
23 Miller, Federal Practice and Procedure § 2947 (3d ed. 2014). Implicit in this required showing is
24 that the relief awarded is only temporary and there will be a full hearing on the merits of the
25 claims raised in the injunction when the action is brought to trial. Preliminary injunctive relief is
26 not appropriate until the court finds that the plaintiff’s complaint presents cognizable claims. See
27 Zepeda v. United States Immigration Serv., 753 F.2d 719, 727 (9th Cir. 1985) (“A federal court

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1 may issue an injunction if it has personal jurisdiction over the parties and subject matter
2 jurisdiction over the claims”).

3 In cases brought by prisoners involving conditions of confinement, any preliminary
4 injunction “must be narrowly drawn, extend no further than necessary to correct the harm the
5 court finds requires preliminary relief, and be the least intrusive means necessary to correct that
6 harm.” 18 U.S.C. § 3626(a)(2). Further, an injunction against individuals not parties to an action
7 is strongly disfavored. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110
8 (1969) (“It is elementary that one is not bound by a judgment . . . resulting from litigation in
9 which he is not designated as a party”).² The Supreme Court has cautioned the federal
10 courts not to interfere with day-to-day operations of the prisons, especially those decisions related
11 to security, a task which is best left to prison officials who have particular experience in dealing
12 with prisons and prisoners. See Turner v. Safley, 482 U.S. 78 (1987).

13 Determining the appropriate program and place of incarceration for plaintiff is within the
14 discretion of the California Department of Corrections and Rehabilitation. See Meacham v. Fano,
15 427 U.S. 215, 229 (1976) (citations omitted) (“The federal courts do not sit to supervise state
16 prisons, the administration of which is of acute interest to the States.”). While the court agrees
17 plaintiff cannot properly prepare for trial without access to his legal materials, the court requires
18 further information regarding plaintiff’s housing and ability to access his legal materials before it
19 can grant injunctive relief. Additionally, plaintiff’s ability to access his legal materials is less
20 imperative because trial is now set to take place in August, rather than in March as plaintiff stated
21 in his request, and any pretrial deadlines are still some months away. However, as discussed

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24 ² However, the fact that injunctive relief is sought from one not a party to litigation does not
25 automatically preclude the court from acting. The All Writs Act, 28 U.S.C. § 1651(a) permits the
26 court to issue writs “necessary or appropriate in aid of their jurisdictions and agreeable to the
27 usages and principles of law.” The All Writs Act is meant to aid the court in the exercise and
28 preservation of its jurisdiction. Plum Creek Lumber Co. v. Hutton, 608 F.2d 1283, 1289 (9th Cir.
1979). The United States Supreme Court has authorized the use of the All Writs Act in
appropriate circumstances against persons or entities not a party to the underlying litigation.
United States v. New York Telephone Co., 434 U.S. 159, 174 (1977).

1 below, the court will seek further information regarding plaintiff's housing status and access to
2 legal materials.

3 **III. Access to Legal Materials**

4 The court is concerned about plaintiff's assertion that he does not have access to his legal
5 property, especially in light of the scheduled trial and associated deadlines. The court will order
6 the Office of the Attorney General to contact the litigation coordinator at the institution where
7 plaintiff is currently housed and inform the court regarding plaintiff's present location, as well as
8 his access to his legal materials, the law library, and photocopying.

9 **IV. Request for Counsel**

10 Plaintiff labeled one of his motions (ECF No. 94) "request for counsel," but did not
11 discuss his request in the body of his motion or otherwise explain why counsel should be
12 appointed in this matter. However, the court will address his request for counsel.

13 The United States Supreme Court has ruled that district courts lack authority to require
14 counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490
15 U.S. 296, 298 (1989). In certain exceptional circumstances, the district court may request the
16 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d
17 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).

18 The test for exceptional circumstances requires the court to evaluate the plaintiff's
19 likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in
20 light of the complexity of the legal issues involved. See Wilborn v. Escalderon, 789 F.2d 1328,
21 1331 (9th Cir. 1986); Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983). Circumstances
22 common to most prisoners, such as lack of legal education and limited law library access, do not
23 establish exceptional circumstances that would warrant a request for voluntary assistance of
24 counsel. In the present case, the court does not find the required exceptional circumstances at this
25 time.

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1 Accordingly, IT IS HEREBY ORDERED as follows:

2 1. Counsel for defendants is instructed to:

- 3 a. Inform the court where plaintiff is currently housed.
- 4 b. Contact the Litigation Coordinator at the institution where plaintiff is currently
- 5 housed to determine what, if any access plaintiff currently has to the law library,
- 6 legal materials, and photocopying.
- 7 c. Within twenty-one days after the filing date of this order, file and serve a statement
- 8 reflecting the findings of such inquiry, including all appropriate declarations.

9 2. Plaintiff's request for the appointment of counsel (ECF No. 94) is denied without

10 prejudice.

11 Further, IT IS HEREBY RECOMMENDED that plaintiff's requests for injunctive relief

12 (ECF Nos. 94, 95) for a court order directing him returned to prison are denied.

13 These findings and recommendations will be submitted to the United States District Judge

14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

15 after being served with these findings and recommendations, plaintiff may file written objections


16 with the court. The document should be captioned "Objections to Magistrate Judge's Findings

17 and Recommendations." Plaintiff is advised that failure to file objections within the specified

18 time may result in waiver of the right to appeal the district court's order. *Martinez v. Ylst*, 951

19 F.2d 1153 (9th Cir. 1991).

20 Dated: January 23, 2018

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23 DEBORAH BARNES

24 UNITED STATES MAGISTRATE JUDGE

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