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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL GARCIA,

 Plaintiff,

 v.

UNKNOWN,

 Defendants.

No. 2:14-cv-2266 JAM AC P

ORDER

I. Introduction

Plaintiff, a state prisoner at Mule Creek State Prison (MCSP), proceeds pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Two matters are currently pending: (1) plaintiff’s request for an extension of time within which to file a First Amended Complaint, ECF No. 16; and (2) the response of the California Attorney General’s Office (and plaintiff’s opposition thereto) to this court’s order requiring a report on the conditions of plaintiff’s confinement, ECF No. 15, 17. For the reasons set forth below, plaintiff’s request for an extension of time is granted, and the court discharges its order to show cause.

On May 15, 2015, this court dismissed plaintiff’s original complaint with leave to file a First Amended Complaint (FAC) within thirty days, ECF No. 8, and, in response to plaintiff’s motion filed May 12, 2015, ECF No. 7, directed the California Attorney General’s Office to contact authorities at MCSP and inquire into the following matters, ECF No. 11 at 1-2:

1 On May 12, 2015, this court received a letter, with exhibits, from
2 plaintiff in which he asserts that MCSP correctional staff seized all
3 of plaintiff's legal materials pertaining to this case, yet provided a
4 cell search slip indicating that nothing was taken; that staff are
5 harassing plaintiff and retaliating against him by conducting
6 repeated cell searches, seizing and destroying plaintiff's property,
7 and allowing other inmates to assault plaintiff; and that medical
8 staff are refusing to disclose all pertinent information concerning
9 plaintiff's injuries. See ECF No. 7. As the court has noted in its
10 separate order, it appears that plaintiff is of advanced age with
11 multiple health problems, including organic brain damage, lung
12 tumors, diminished hearing and sight, and a learning disability. It
13 also appears that plaintiff has required the assistance of another
14 inmate to prepare and file matters in this court. [¶] In light of
15 plaintiff's apparent medical conditions, alleged vulnerability to staff
16 and other inmates, and lack of access to his legal materials in this
17 action, the Office of the California Attorney General is directed to
18 investigate plaintiff's allegations by contacting and questioning
19 MCSP prison authorities forthwith, and to file a status report with
20 the court.

11 II. Special Appearance and Report

12 On June 8, 2015, Supervising Deputy Attorney General Monica Anderson made a special
13 appearance in this case to report on the matters identified by the court. ECF No. 15. The
14 response includes supporting declarations and exhibits from MCSP Correctional Sergeant F.
15 Jacobo (Ex. A); MCSP Correctional Officer C. Johnson (Ex. B); MCSP Appeals Coordinator M.
16 Elorza (Ex. C); and MCSP Litigation Coordinator R. Giovacchini (Ex. D). These materials
17 demonstrate the following:

- 18 • "Plaintiff is a Level-4 inmate with a classification score of 123,
19 which requires him to be housed in a maximum security setting.
20 Plaintiff is serving multiple life terms, and is housed at [MCSP],
21 Facility A, on a General Population Sensitive Needs Yard (SNY)
22 [which is] comprised of inmates who require additional protection
23 from the more predatory inmate population." ECF No. 15 at 2
24 (citing Jacobo Decl.).
- 25 • On February 19, 2015, in response to confidential information
26 that dangerous contraband may be present, Facility A was placed on
27 a modified program. "[E]ach cell was searched and all property
28 items were removed and placed into clear plastic bags and
processed through a scanner (to detect metal or other contraband).
The bags were labeled with each inmate's name, sent through the
scanner, and placed back in the designated cell, if no contraband or
metal was detected." ECF No. 15-1 at 3 (Jacobo Decl., ¶ 3).
Confiscated items "were electronic items such as televisions,
radios, and fans. . . . [no] legal property . . . was confiscated." Id.

1 • On February 20, 2015, every cell in Facility A was searched,
2 including plaintiff's cell, which plaintiff shares with another
3 inmate. "The cell search receipt indicates that 'all items were
4 labeled and bagged.' The items were scanned through a metal
5 detector, and returned to the cell if no contraband was found." ECF
6 No. 15 at 2 (citing Jacobo Decl., Attachment (Attmt.) A, ECF No.
7 15-1 at 6). (The receipt indicates that plaintiff's property did not
8 include contraband but does not clearly reflect that all of plaintiff's
9 property was returned to him.)

6 • On February 21, 2015, plaintiff submitted a CDCR Form 22
7 ("Request for Interview, Item or Service") to Officer Benavides,
8 who forwarded the form to Sergeant Jacobo. Jacobo states that "the
9 purpose of a using a Form 22 is to foster communication between
10 the inmate and line staff, and to informally resolve issues," and so
11 he "advised Garcia to address the form directly to the officers who
12 searched his cell. I advised Garcia that the names of the officers
13 were on the cell search receipt." ECF No. 15-1 at 3 (Jacobo Decl.).
14 However, Sergeant Jacobo opines that plaintiff did not submit the
15 form for review to the two officers who searched his cell. Id.

11 • Sergeant Jacobo states, ECF No. 15-1 at 3-4 (Jacobo Decl.)
12 (citing Attmt. 2, ECF No. 15-1 at 7-12):

13 Throughout the time I have worked on A-Facility, I have
14 had several conversations with Garcia regarding a wide
15 range of issues he has had on the facility. I have offered
16 solutions to Garcia, which he chooses to ignore. In January
17 2015, Garcia wrote a letter to CDCR Office of Internal
18 Affairs alleging staff misconduct on A Facility at MCSP
19 [alleging, inter alia, that MCSP Facility A staff, allegedly
20 acting in retaliation against plaintiff for pursuing federal
21 civil rights litigation, were screaming at plaintiff, ignoring
22 his low bunk chrono, ignoring his Forms 22, and ignoring
23 when other inmates shoved and bullied plaintiff]. In his
24 letter, he raised similar allegations against the staff on his
25 unit, and claimed that when he wrote to the warden, he did
26 not receive a response. [On January 28, 2015,] Internal
27 Affairs forwarded the letter to the warden's office . . .
28 [which] had me conduct an interview with Garcia. During
the interview, Garcia stated that he had resolved his issues
by using the Inmate Disability Assistance Program on the
facility. . . [which] assigns inmates to assist other inmates . .
. . Garcia also stated that his allegations of staff misconduct
had been resolved and he no longer wished to pursue the
matter. Garcia was advised by the warden [by letter dated
February 17, 2015] to contact his assigned correctional
counselor if he had any additional concerns or questions.

26 • Inmate cells are routinely searched three times per day. On June
27 4, 2015, at the request of the Appeals Coordinator, Officer Johnson
28 performed a search of plaintiff's cell for the purpose of determining
"if Garcia had legal material in his cell." ECF No. 15-1 at 14
(Johnson Decl.). Officer Johnson made the following observations,
id. at 14-5 (¶ designations omitted):

1 During my search I observed very organized stacks of
2 documents. The cell contains four shelves, which were
3 filled with stacks of paper, approximately 12-inches. I also
4 observed stacks of documents on the floor, under and up to
5 the bottom of the shelves. These documents were in piles
6 and secured by rubber bands and/or string. I determined
7 that the documents contained legal work by lifting up the
8 cover pages on approximately 4-5 stacks. I did not read the
documents but saw enough to know that there were legal
documents. I was in the cell probably less than five
minutes. Garcia was in the dayroom while I searched his
cell. He saw me exit his cell, but did not say anything to me
about his property, except only to ask if I was searching his
cell. I estimate that there were enough documents to fill
about six boxes.

9 • MCSP Appeals Coordinator Elorza conducted a search of
10 plaintiff's non-healthcare related appeals for the period February
11 20, 2015 to May 9, 2015. Subject to the caveat noted below,
12 plaintiff submitted only one appeal during this period, MCSP-A-15-
13 0790, which was screened out at the first level on March 27, 2015,
14 due to plaintiff's failure to attach documents reflecting that he
15 initially sought informal review (pursuant to a Form 22) of his
16 complaints concerning the "weekly Indigent Supplies Sign-up
17 sheets" with the Facility A Program Sergeant.¹ The caveat to this
search is that there were technical problems with the Inmate/Parolee
Appeals Tracking System (IATS) system during the period
September 19, 2014 to March 3, 2015, which resulted in the loss of
some appeals.² Subject to the same caveat, it appears that plaintiff
did not submit any appeal during the period February 20, 2015 to
May 9, 2015, alleging that his legal property was confiscated or that
he was being assaulted by other inmates. ECF No. 15-1 at 17-20
(Elorza Decl.).

18 • MCSP Litigation Coordinator R.Giovacchini, at the request of
19 the Attorney General's office, "researched the status of inmate Paul
20 Garcia to determine his current housing, any possible safety
21 concerns he may have, and whether his requests for medical care
22 have been denied." ECF No. 15-1 at 27 (Giovacchini Decl.).
Giovacchini states the following, id. at 27-8 (¶ designations
omitted):

23 ¹ Appeals Coordinator Elorza explains that that submitting a Form 22 "does not stay the time to
24 file an appeal through the inmate appeals process, and an inmate is not precluded from filing an
25 appeal with the Appeals Office prior to receiving response to the Form 22. A formal appeal may
26 be screened out with instruction to the inmate to provide supporting documents by way of
initiating resolution to their concern through the Form 22 process." ECF No. 15-1 at 18 (Elorza
Decl.).

27 ² Appeals Coordinator Elorza states that the IATS technical problems may have resulted in the
28 loss of 109 appeals that were initially submitted during the period September 19, 2014 to March
3, 2015, as well as updates to 261 ongoing appeals, and the loss of completion dates for 90 older
appeals. See ECF No. 15-1 at 19-20 (Elorza Decl.).

1 Inmate Garcia is appropriately housed on a Sensitive Needs
2 Yard. I did not find any record of any attempted assaults or
3 actual assaults as alleged by Garcia. Nor is there any record
4 of Garcia complaining to staff of assaults by other inmates.
5 Garcia did receive a CDCR 115 Rules Violation Report on
6 May 5, 2015, for Behavior that Could Lead to Violence
7 [being in a fighting stance with another inmate], a violation
8 of CCR, title 15, section 3005(a). That rules violation is
9 currently pending adjudication. (Attachment 1 [ECF No.
10 15-1 at 30].) Garcia submitted a Health Care Services
11 Request Form on May 5, 2015, claiming he was attacked by
12 another inmate [and that the responding officer, Griffiths,
13 mischaracterized the incident as potential mutual combat].
14 Garcia was examined by medical staff on May 6, 2015, and
15 an x-ray was taken of his right hand [results of x-ray not
16 provided]. (Attachment 2 [ECF No. 15-1 at 32].)

17 As summarized by Deputy Attorney General Anderson, these several declarations provide
18 that “although plaintiff’s cell was searched, his property was returned;” that “plaintiff has not
19 filed any inmate appeals regarding the subjects of his complaints to the court;” and that “plaintiff
20 is appropriately housed on a sensitive needs yard.” ECF No. 15 at 1-3.

21 Plaintiff has filed an opposition to the Attorney General’s report that includes copies of
22 several Forms 22 and Health Care Services Request (HCSR) Forms submitted by plaintiff over
23 the last several months and allegedly ignored or gratuitously granted by correctional staff. See
24 generally ECF No. 17. The Forms 22 include complaints about plaintiff’s treatment by other
25 inmates. The HCSR Forms demonstrate plaintiff’s repeated attempts to obtain eyeglasses and
26 medications, including for treatment of petite mal seizures associated with his organic brain
27 damage, a breathing nebulizer to treat his lung disorder, and diabetic medications and sufficient
28 food. Plaintiff states that the refusal of correctional staff to properly process his Forms 22 left
him “no way to file [exhaust] an appeal,” and that many of his medical problems remain
untreated. ECF No. 17 at 4. Plaintiff also states that the records in his cell observed by Officer
Johnson consisted primarily of plaintiff’s medical records and did not include all of his legal
materials, which plaintiff still seeks. The opposition includes an affidavit by plaintiff’s cell mate
that attests to plaintiff’s advanced age and medical problems, and to the alleged abuse of plaintiff
by other inmates, particularly while showering; states that correctional staff have ignored or
“bogusly granted” plaintiff’s numerous written requests for intervention and assistance; and

1 asserts that Correctional Officer Griffith is retaliating against plaintiff in a “private war.” Id. at
2 19.

3 While the undersigned is not entirely persuaded that MCSP correctional staff are doing all
4 they can to protect plaintiff from harassment by other inmates,³ the undersigned is nonetheless
5 persuaded that plaintiff is sufficiently safe and supported to proceed in this action for purposes of
6 filing a FAC. Plaintiff is housed on a sensitive needs yard, and the Forms 22 submitted by
7 plaintiff include a response from Officer Griffith that provides, “[a]s per our conversation on
8 1/27/15 . . . staff will assist you in getting access to a shower.” ECF No. 17 at 12. These
9 circumstances fall short of the extraordinary circumstances warranting preliminary injunctive
10 relief in a newly-filed action.⁴

11 Concerning plaintiff’s property, the attachments to the declaration of Sergeant Jacobo do
12 not exclude the possibility that some of plaintiff’s personal property was permanently confiscated.
13 Nor do Sergeant Jacobo’s declaration and exhibits reference the search of plaintiff’s cell on
14 March 28, 2015; the receipt for that search, brought to the court’s attention by plaintiff, appears to
15 reflect the confiscation of contraband. See ECF No. 7 at 6. Nevertheless, despite plaintiff’s
16 protestations to the contrary, the declaration of Officer Johnson indicates that plaintiff is currently
17 in possession of his legal materials. Officer Johnson’s observations, together with the omission

18 ³ The declaration of Litigation Coordinator Giovacchini suggests that there was no independent
19 investigation into plaintiff’s allegation that the hand injury he sustained in the RVR incident was
20 an intentional assault by another inmate (Ortega). Plaintiff has filed a supplemental statement
21 asserting that the reporting officer (Griffith) sought to cover up this alleged assault. See ECF No.
22 14.

23 ⁴ “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the
24 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
25 balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v.
26 Natural Resources Defense Council, 555 U.S. 7, 20 (2008); see also Stormans, Inc. v. Selecky,
27 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter). The propriety of a request for injunctive
28 relief hinges on a significant threat of irreparable injury that must be imminent in nature.
Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988). The principal
purpose of preliminary injunctive relief is to preserve the court’s power to render a meaningful
decision in a case after a trial on the merits. See 11A Charles Alan Wright & Arthur R. Miller,
Federal Practice and Procedure, § 2947 (2d ed. 2010). An injunction against individuals who are
not parties to the action is strongly disfavored. Zenith Radio Corp. v. Hazeltine Research, Inc.,
395 U.S. 100 (1969). In cases brought by prisoners involving conditions of confinement, any
preliminary injunction “must be narrowly drawn, extend no further than necessary to correct the
harm the court finds requires preliminary relief, and be the least intrusive means necessary to
correct the harm.” 18 U.S.C. § 3626(a)(2).

1 of any reference to confiscated legal materials in plaintiff's request for extension of time to file
2 his FAC (see infra), indicate that plaintiff's original allegations concerning the alleged
3 confiscation of his legal materials in February 2015, ECF No. 7, have been resolved.

4 Finally, while the declaration of Appeals Coordinator Elorza leaves open the possibility
5 that plaintiff may have filed relevant appeals during the period September 19, 2014 to March 3,
6 2015, which cannot be retrieved, it remains plaintiff's burden to demonstrate that he exhausted all
7 *available* administrative remedies on each of his claims *before* commencing the instant action.
8 Exhaustion must be attempted pursuant to the CDCR Form 602 Appeal administrative grievance
9 process, not the informal resolution process reflected on the Form 22. The Prison Litigation
10 Reform Act of 1995 (PLRA) mandates that "[n]o action shall be brought with respect to prison
11 conditions under section 1983 . . . or any other Federal law, by a prisoner confined in any jail,
12 prison, or other correctional facility until such administrative remedies as are available are
13 exhausted." 42 U.S.C. § 1997e(a).

14 For these several reasons, the court finds that the response of the Deputy Attorney
15 General, together with the declarations and exhibits submitted by MCSP staff members Jacobo,
16 Johnson, Elorza and Giovacchini, adequately demonstrate that plaintiff is appropriately housed
17 and supervised, with adequate access to his legal materials. Absent the extraordinary
18 circumstances noted above, see n.3, supra, the undersigned is without authority to monitor
19 plaintiff's numerous allegations until they are set forth as cognizable claims in a FAC. Therefore,
20 plaintiff's motion for court order, ECF No. 7, is denied.

21 III. Plaintiff's Request for Extension Of Time

22 Plaintiff requests a 45-day extension of time to file a FAC responsive to the court's May
23 15, 2015 order. The request, prepared by another inmate ("plaintiff's jailhouse lawyer") but
24 signed by plaintiff, recounts plaintiff's physical and mental impairments; states that plaintiff and
25 his legal assistant live in different buildings and do not go to the same yard, but have requested
26 time in the prison library; and states that plaintiff is awaiting responses to his requests for copies
27 of his medical and appeal documents. The request does not allege the confiscation or improper
28 retention of plaintiff's legal materials. For good cause shown, plaintiff's request is granted.


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IV. Conclusion

For the foregoing reasons, IT IS HEREBY ORDERED that:

1. Plaintiff's request for extraordinary relief, ECF No. 7, is denied.
2. Plaintiff's request for an extension of time, ECF No. 16, is granted; plaintiff shall file his FAC on or before August 14, 2015.
3. The assistance of the California Attorney General's Office and MCSP staff is acknowledged.

DATED: June 29, 2015



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE