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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 BRUCE BENTON,

12 Plaintiff,

13 v.

14 EL DORADO COUNTY SHERIFF'S
15 DEPARTMENT, et al.,

16 Defendants.
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No. 2:15-cv-0772 TLN AC P

ORDER

18 Plaintiff is an El Dorado County Jail detainee proceeding pro se and in forma pauperis
19 with this civil rights action against sole defendant El Dorado County Deputy Sheriff Clingman.
20 By order filed March 13, 2019, the court found that plaintiff's Second Amended Complaint states
21 a cognizable Eighth Amendment failure-to-protect claim against Clingman. ECF No. 35.
22 Pending is the court's request to the El Dorado County Sheriff's Department that it provide
23 plaintiff with the information necessary for the United States Marshal to serve process on
24 defendant Clingman. ECF No. 43. Meanwhile, at plaintiff's request, the court issued an order
25 that informed the El Dorado County Sheriff's Department that plaintiff's requests to use the jail's
26 legal library, services and materials are valid and necessary to pursue this case. ECF No. 39.

27 Plaintiff now requests further assistance from this court in obtaining additional library
28 access and legal supplies, and information concerning facts and witnesses pertinent to this case.

1 ECF No. 44. Plaintiff's request will be denied as premature for the following reasons.

2 Once defendant has been served process and appeared in this action, the court will issue a
3 Discovery and Scheduling Order that sets forth the procedures and deadlines for plaintiff to
4 obtain discovery from defendant and pertinent witnesses. Until that time, plaintiff has no grounds
5 for demanding information from the Sheriff's Department or subpoenaing witnesses. Plaintiff
6 may, however, during this period request that his own witnesses prepare affidavits under penalty
7 of perjury that can later be used to support or oppose a motion for summary judgment and/or at
8 trial. Should this case proceed to trial, plaintiff will then be provided the opportunity to subpoena
9 witnesses and documents.

10 Plaintiff's requests for additional library access and supplies must be construed within the
11 framework of his First Amendment right to access the courts. Correctional facilities "must
12 provide inmates with access to an adequate law library or, in the alternative, with adequate
13 assistance from persons trained in the law." Lindquist v. Idaho State Bd. of Corr., 776 F.2d 851,
14 855 (9th Cir. 1985) (citing Bounds v. Smith, 430 U.S. 817, 826-28 (1977)). An adequate law
15 library is one that meets minimum constitutional standards by providing "inmates with sufficient
16 access to legal research materials to prepare pro se pleadings, appeals, and other legal
17 documents." Lindquist, 776 F.2d at 856. In addition, correctional facilities "are required to
18 provide a reasonable supply of paper and envelopes for the indigent inmates so as to permit them
19 access to the courts." Morgan v. Nevada Bd. of State Prison Comm'rs, 593 F. Supp. 621, 624 (D.
20 Nev. 1984). However, "[a] right of access claim other than one alleging inadequate law libraries
21 or alternative sources of legal knowledge must be based on an actual injury." Johnson v. Moore,
22 948 F.2d 517, 521 (9th Cir. 1991) (citation omitted). A prisoner asserting such denial of access to
23 the courts must demonstrate a resulting "actual injury" – "that is 'actual prejudice with respect to
24 contemplated or existing litigation, such as the inability to meet a filing deadline or to present a
25 claim.'" Lewis v. Casey, 518 U.S. 343, 348 (1996). Plaintiff's current allegations do not meet
26 this standard.

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1 Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that plaintiff's
2 request filed May 17, 2019, ECF No. 44, is denied without prejudice.

3 DATED: May 22, 2019

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5 ALLISON CLAIRE
6 UNITED STATES MAGISTRATE JUDGE
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