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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERALD SPENCE,

 Plaintiff,

 v.

G. KAUR, et al.,

 Defendants.

No. 2:16-cv-1828 TLN KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se, currently housed at High Desert State Prison. Plaintiff’s request for permission to correspond with 12 incarcerated witnesses and three correctional officers (ECF No. 107) is before the court.

Plaintiff’s Request

While housed at North Kern State Prison (“NKSP”), plaintiff submitted a CDC 1074 form to Captain Chanelo at NKSP administration on or about November 5, 2019, but to date has received no response. (ECF No. 107 at 2.) Plaintiff’s efforts are recounted as follows:

1. On September 6, 2019, plaintiff submitted a CDCR 22 requesting permission to correspond with 12 inmates who were housed at CSP-Solano in 2016 and three correctional officers. (ECF No. 107 at 3.) The request was addressed to CCI Nichols, and delivered to L. Hernandez, Jr. on September 6, 2019, and forwarded to CCI Nichols on September 6, 2019. (Id.)
2. On October 7, 2019, plaintiff wrote another CDCR 22 stating it was his second request

1 for authorization to correspond with inmate witnesses, noting it was imperative he be allowed to
2 do so for trial preparation and affidavits. (ECF No. 107 at 5.) This request was addressed to CCI
3 Nichols, and received by prison staff (illegible) on October 8, 2019. (Id.) Handwriting in the
4 corner of the form notes “by Torres at podium refused to accept 10/8/19 10:30 a.m.” (Id.)

5 3. On October 28, 2019, plaintiff completed another CDCR 22 addressed to CCI Nichols,
6 asking for a response to the prior request: “You were waiting confirmation from Captain
7 Chanelo.” (Id.) Plaintiff added that he needed to know before seeking court intervention. This
8 request was received by J. Villareal on October 28, 2019, who noted the request was sent to CCI
9 Nichols. (ECF No. 107 at 4.)

10 4. On November 5, 2019, plaintiff submitted a request for correspondence approval, on
11 the proper CDC 1074 form to NKSP administration, Captain Chanelo, requesting approval to
12 correspond with 12 inmates and three staff members. (ECF No. 107 at 1.) Correctional Counsel
13 CCI Nichols accepted the request and informed plaintiff that Captain Chanelo had the final
14 approval. Litigation Coordinator Johnson was in touch with defendants’ counsel, but plaintiff
15 received no results, and to date has not received a response to his CDC 1074 request. (ECF No.
16 107 at 1.)

17 Requested Witnesses

18 Plaintiff seeks permission to correspond with the following witnesses who have been
19 disclosed through discovery:

20 Correctional officers Williams and Stilner, who worked in the education/medical building,
21 and building two control officer Winsaur, all employed at CSP-Solano in 2016.

22 The following inmates who were housed at CSP-Solano in 2016: Brooks, H48242;
23 McCloud, AB664; Jones, K26983; Davis, E42052; Walker, K15858; Johnson, F86044; Parnell,
24 E51057; Griffin, A19752; Collins, E45781; and Sheperd, V77471.¹

25 ¹ The CDCR inmate locator reflects the current status of the potential witnesses (as of December
26 17, 2020): Brooks, H48242 (Folsom State Prison); McCloud, AB6664 (High Desert State
27 Prison); Jones, K26983 (CSP-Solano); Davis, E42052 (CSP-Solano); Walker, K15858
28 (Chuckawalla Valley State Prison); Johnson, F86044 (California Men’s Colony); Parnell, E51057
(California Medical Facility); Griffin, A19752 (not in CDCR custody); Collins, E45781 (not in
CDCR custody); and Sheperd, V77471 (CSP-Sacramento).

1 Plaintiff's Operative Complaint

2 This action proceeds on plaintiff's third amended complaint. (See ECF Nos. 89 (March 7,
3 2019); 90 (December 20, 2019).) Plaintiff alleges that in 2016, while he was housed at California
4 State Prison-Solano ("CSP-Solano"), defendants Kaur (the Sr. Librarian) and Sgt. Chambers
5 issued a 128-B and a CDCR-115 Rules Violation Report² ("RVR") against Plaintiff on false
6 charges, in retaliation for plaintiff's filing of a prison grievance against Kaur. (ECF No. 89.) The
7 hearing on the RVR took place on November 18, 2016. (ECF Nos. 89, 90, 92.) The RVR was
8 subsequently reversed, but Plaintiff lost 30 days of privileges, including access to the yard and the
9 law library. Plaintiff seeks unspecified injunctive relief and monetary damages.

10 Discussion

11 Plaintiff's request for an order requiring that plaintiff be allowed to correspond with
12 inmate witnesses and three correctional officers is construed as a request for preliminary
13 injunction. A preliminary injunction should not issue unless necessary to prevent threatened
14 injury that would impair the court's ability to grant effective relief in a pending action. "A
15 preliminary injunction . . . is not a preliminary adjudication on the merits but rather a device for
16 preserving the status quo and preventing the irreparable loss of rights before judgment." Sierra
17 On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d 1415, 1422 (9th Cir. 1984). In cases brought
18 by prisoners involving conditions of confinement, any preliminary injunction "must be narrowly
19 drawn, extend no further than necessary to correct the harm the court finds requires preliminary
20 relief, and be the least intrusive means necessary to correct the harm." 18 U.S.C. § 3626(a)(2).

21 "The proper legal standard for preliminary injunctive relief requires a party to demonstrate
22 'that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
23 absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction
24 is in the public interest.'" Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing
25 Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008) (internal quotations omitted)).

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28 ² "128-B" and "CDCR-115" are references to forms used by prison staff to document various degrees
of disciplinary action. See 15 C.C.R. §§ 3312, 3326.

1 “Speculative injury does not constitute irreparable injury sufficient to warrant granting a
2 preliminary injunction.” Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir.
3 1988), citing Goldie’s Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472 (9th Cir. 1984).
4 Rather, a presently existing actual threat must be shown, although the injury need not be certain
5 to occur. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 130-31 (1969); FDIC
6 v. Garner, 125 F.3d 1272, 1279-80 (9th Cir. 1997); Caribbean Marine, 844 F.2d at 674.

7 A plaintiff cannot, as a general matter, obtain injunctive relief against non-parties.
8 “Unrelated claims against different defendants belong in different suits[.]” George v. Smith, 507
9 F.3d 605, 607 (7th Cir. 2007). However, a federal court does have the power to issue orders in
10 aid of its own jurisdiction, 28 U.S.C. § 1651(a), and to prevent threatened injury that would
11 impair the court’s ability to grant effective relief in a pending action. Sierra On-Line, Inc. v.
12 Phoenix Software, Inc., 739 F.2d 1415, 1422 (9th Cir. 1984); Gon v. First State Ins. Co., 871 F.2d
13 863 (9th Cir. 1989).

14 Here, liberally construed, plaintiff alleges that CCI Nichols and Captain Chanelo are
15 interfering with plaintiff’s efforts to gather statements and affidavits that would support his
16 retaliation claim in this civil rights action. Plaintiff asserts that at least twelve inmates and three
17 correctional officers witnessed conduct at issue herein. Insofar as such testimony could be
18 material to a potential dispositive motion or at trial, the allegations that CCI Nichols and Captain
19 Chanelo are obstructing plaintiff’s access to such witnesses could, if proven, justify an order in
20 furtherance of the court’s ability to adjudicate this case.

21 Prisoners have a constitutional right to send and receive mail, but it is limited by the
22 state’s interest in maintaining safety and security in its prisons. Turner v. Safley, 482 U.S. 78, 89
23 (1987). Thus inmates in California’s prison system may correspond with other inmates “provided
24 those persons meet the criteria of approval of no known gang affiliation, or involvement with a
25 known terrorist group or racketeering enterprise.” Cal. Code Regs. tit. 15, § 3139(b). The same
26 regulation gives a warden authority to restrict an inmate in another facility from communicating
27 with inmates in his custody. “[A]pproval to correspond may be revoked due to disciplinary
28 violations involving correspondence between the inmates/parolees or as a result of classification

1 action based on safety and security.” 15 CCR § 3139(d). “If the request to correspond is denied
2 at the . . . state correctional facility, the reason for denial shall be annotated on the CDC Form
3 1074,” and “staff at the sending institution/field office shall ensure that the 2nd page [of the form]
4 is returned to the initiating inmate.” 15 CCR § 3139(c)(4), (6). “If an inmate’s request to
5 correspond with another inmate/parolee is denied, the CCI [Correctional Counselor I] shall advise
6 the inmate in writing.” 15 CCR § 3139(c).

7 Plaintiff’s request does not demonstrate that Captain Chanelo has denied plaintiff access
8 to correspond with the potential witnesses identified above, or whether Captain Chanelo has
9 simply failed to respond to plaintiff’s efforts to gain such access. Title 15 CCR § 3139 makes
10 clear that the safety and security of the state’s correctional facilities could be implicated here,
11 giving rise to the possible inference that the security of the prison may have been part of a
12 decision to decline to disallow plaintiff from corresponding with inmates he wants to sign
13 affidavits for use in this case. However, if there has been an official denial of access, state law
14 requires plaintiff to have received a document reflecting that decision, including the reason for it.
15 15 CCR § 3139(c)(4), (6). Plaintiff has been diligent and tenacious in prosecuting this action, as
16 well as in his efforts to obtain the requested witness statements. Therefore, the absence of such a
17 document may indicate that Captain Chanelo has not decided whether to allow the
18 correspondence – and thus that no security interest bars plaintiff from contacting the proposed
19 witnesses in order to obtain affidavits which he believes would support his claim. Though prison
20 officials enjoy broad discretion in executing their duties, state officials must ‘assure indigent
21 defendants an adequate opportunity to present his claims fairly.’” Bounds v. Smith, 430 U.S.
22 817, 823 (1977) (citation omitted). Blocking a prisoner access to a potentially material witness
23 for no legitimate penological purpose, even inadvertently, unreasonably impinges on his right of
24 access to the court and the opportunity to present his claims fairly.

25 That said, it is plaintiff who has the burden of proving that the balance of equities tips in
26 favor of an injunction ordering that plaintiff be allowed to correspond with the witnesses
27 identified above. The court does not yet have enough information before it with which to rule on
28 which way the balance tips. Therefore, defendants are ordered to respond to plaintiff’s request on

1 the issue of whether this court should order Captain Chanelo, or officials at High Desert State
2 Prison where plaintiff is currently housed, to allow plaintiff to correspond with the potential
3 witnesses to material facts alleged in his complaint. Defendants shall provide any and all
4 documentation and information at their or their counsel's disposal, including records in the
5 custody or control of the California Department of Corrections and Rehabilitation ("CDCR"),
6 reflecting the response, if any, of Captain Chanelo, CCI Nichols, or other official at North Kern
7 State Prison to plaintiff's request for permission to contact certain alleged inmate witnesses and
8 three correctional officers concerning this case. If defendants' counsel deems it necessary to
9 submit documents under seal for in camera review, he may do so. Defendants shall also submit a
10 written response to the request for an order requiring that plaintiff be allowed such
11 correspondence.

12 Plaintiff's reply shall be filed fourteen days thereafter.

13 Scheduling Order Implications

14 Because the instant request may impact plaintiff's ability to file or oppose a dispositive
15 motion, the January 4, 2021 pretrial motions deadline is vacated. No party shall file a dispositive
16 motion until further order of the court.

17 Accordingly, IT IS HEREBY ORDERED that:

18 1. Within fourteen days from the date of this order, defendants shall respond to plaintiff's
19 request (ECF No. 107) as to whether the court should order officials at North Kern State Prison or
20 High Desert State Prison, where plaintiff was subsequently transferred, to allow plaintiff to
21 correspond with the inmates and correctional officers plaintiff has named as potential witnesses to
22 material facts alleged in his complaint. Defendants shall provide any and all documentation and
23 information at their or defense counsel's disposal, including records in the custody or control of
24 the California Department of Corrections and Rehabilitation, reflecting the response, if any, of
25 CCI Nichols, Captain Chanelo, or other prison staff at North Kern State Prison as to plaintiff's
26 request for permission to contact such witnesses concerning this case.

27 2. Plaintiff's reply shall be filed fourteen days after receipt of defendants' response.

28 3. The January 4, 2021 pretrial motions deadline is vacated. No party shall file a

1 dispositive motion until further order of court.

2 Dated: December 18, 2020

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE