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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

G. DANIEL WALKER,

Plaintiff,

v.

SCOTT KERNAN, et al.,

Defendants.

No. 2:17-cv-1764 KJM DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff claims defendants conspired to retaliate against him because he named them as defendants in lawsuits. Presently before the court are plaintiff's motions for legal materials. (ECF Nos. 38, 40.)

By order dated May 26, 2020, this action was stayed for 120 days as part of the court's Alternative Dispute Resolution (ADR) Pilot Program. (ECF No. 36.) A settlement conference is scheduled for November 3, 2020. (ECF No. 39.) Accordingly, the court will extend the stay through November 3, 2020.

Plaintiff has filed two motions requesting that the court compel officials at California Health Care Facility ("CHCF") to provide him with his legal materials. (ECF Nos. 38, 40.) In the first motion, he states that when he was transferred to CHCF on January 17, 2020 his legal files, books, and materials were seized. Thereafter, he filed an administrative grievance that was rejected four times and later cancelled. He argues he needs the requested materials in order to prepare discovery requests. (ECF No. 38 at 2.) Plaintiff's second motion contains allegations

1 regarding plaintiff’s long history of disagreements with prison officials’ decisions denying
2 various disability accommodations. (ECF No. 40.) He seeks an order from the court “grant[ing]
3 and shap[ing] ADA [(Americans with Disabilities Act)] accommodations and order[ing]
4 defendant¹ Department of Corrections, and its employees, to forthwith implement and provide
5 those accommodations.” (ECF No. 40 at 12.)

6 Defendants argue in their opposition that plaintiff’s motion should be denied because it is
7 directed toward non-party officials at CHCF. Additionally, they have confirmed that plaintiff
8 does not have any property in storage at CHCF. Finally, they argue plaintiff has not alleged any
9 harm. (ECF No. 41.)

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

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

23 The principle purpose for preliminary injunctive relief is to preserve the court’s power to
24 render a meaningful decision after a trial on the merits. See 9 Charles Alan Wright & Arthur R.
25 Miller, Federal Practice and Procedure § 2947 (3d ed. 2014). Implicit in this required showing is
26 that the relief awarded is only temporary and there will be a full hearing on the merits of the

27 ¹ The court notes that the California Department of Corrections and Rehabilitation was not named
28 as a defendant in the operative complaint. (See ECF No. 22.)

1 claims raised in the injunction when the action is brought to trial. Preliminary injunctive relief is
2 not appropriate until the court finds that the plaintiff’s complaint presents cognizable claims. See
3 Zepeda v. United States Immigration Serv., 753 F.2d 719, 727 (9th Cir. 1985) (“A federal court
4 may issue an injunction if it has personal jurisdiction over the parties and subject matter
5 jurisdiction over the claims . . .”).

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

16 Defendants have indicated plaintiff does not have any property in storage at CHCF. (ECF
17 No. 41.) Because there are no pending deadlines in this action and the case is presently stayed as
18 part of the court’s Alternative Dispute Resolution (ADR) pilot program, plaintiff does not have
19 any immediate need to access materials to prepare discovery requests. Thus, plaintiff has not
20 shown that he will suffer irreparable harm should this motion be denied. In the event the parties
21 fail to settle, plaintiff may file a renewed motion seeking access to his materials.

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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 litigation. United States v.
New York Telephone Co., 434 U.S. 159, 174 (1977).

1 Additionally, plaintiff’s request for this court to promulgate accommodations and mandate
2 that non-parties enforce such accommodations should be denied because the court cannot provide
3 relief that is unrelated to plaintiff’s underlying claim. See Pacific Radiation Oncology, LLC, v.
4 Queen’s Medical Center, 810 F.3d 631, 636 (9th Cir. 2015) (holding there must be a “sufficient
5 nexus between the request in a motion for injunctive relief and the underlying claim itself.”). To
6 the extent plaintiff argues CDCR has failed to accommodate his disability in violation of the
7 ADA, he may file a separate civil action after exhausting administrative remedies.

8 For the reasons set forth above, IT IS HEREBY ORDERED that the stay in this action is
9 extended through November 3, 2020.

10 IT IS HEREBY RECOMMENDED that plaintiff’s motions for release of legal materials
11 (ECF Nos. 38, 40) be denied without prejudice to its renewal should the parties fail to reach a
12 settlement.

13 These findings and recommendations are 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, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 “Objections to Magistrate Judge's Findings and Recommendations.” Any response to the
18 objections shall be filed and served within fourteen days after service of the objections. The
19 parties are advised that failure to file objections within the specified time may waive the right to
20 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: October 12, 2020

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25 DEBORAH BARNES
26 UNITED STATES MAGISTRATE JUDGE

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28 DLB:1/Orders/Prisoner.Civil.Rights/walk1764.docx