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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMISI JERMAINE CALLOWAY,
Plaintiff,
v.
D. NIEVES, et al.,
Defendants.

No. 2:19-cv-01792-KJM-CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. This case is proceeding on plaintiff’s complaint alleging that defendants Nieves and Luang used excessive force against him and that defendants Mims, Aungst, and Abu were deliberately indifferent to his serious medical needs resulting from the use of force, all in violation of the Eighth Amendment. Currently pending before the court are defendants’ motion to compel and plaintiff’s motion for a temporary restraining order/preliminary injunction. ECF Nos. 72, 78. The court will address each motion in turn.

I. Discovery Disputes

A. Plaintiff’s Motion to Compel

On September 27, 2021, the court granted plaintiff’s motion to compel, in part, and denied it in part. ECF No. 67. Defendants were ordered to produce any documents responsive to plaintiff’s Request for Production No. 1, as modified, and No. 4 for in camera review within 30

1 days from the date of the order. ECF No. 67 at 12. On October 20, 2021, defendants submitted
2 the documents for in camera review indicating that there are no documents responsive to
3 plaintiff's Request for Production No. 1, as modified by the court. ECF No. 73. Defendants
4 lodged two documents, in unredacted and redacted form, in response to plaintiff's Request for
5 Production No. 4. ECF No. 73 at 2.

6 After having conducted the in camera review of the lodged documents, the court
7 concludes that they should be released to plaintiff in redacted form and subject to a protective
8 order imposing additional restrictions on their viewing. In balancing the factors identified in this
9 court's order of September 27, 2021 regarding plaintiff's motion to compel, the court finds that
10 disclosure of the use of force critique and the confidential supplement to plaintiff's Appeal Log
11 Number CHCF-C-15-03339 outweigh any potential risk to institutional safety and security. See
12 Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033 (9th Cir. 1990); Soto v. City of Concord, 162
13 F.R.D. 603, 613 (N.D. Cal. 1995). These risks can be mitigated by redacting the sensitive
14 information contained in the documents as defense counsel has done in Bates Nos. 029-056.
15 Plaintiff already knows the identity of the correctional officers who were involved in the use of
16 force as well as the appeal inquiry, and their denials of wrongdoing do not pose any additional
17 security concerns. See Dowell v. Griffin, 275 F.R.D. 613, 618 (S.D. Cal. 2011) (overruling
18 objections against disclosure in part because "[t]he identities of the officers in question are
19 known, and the identity of anyone not a party to this case potentially disclosed in the document
20 can be withheld by a protective order"). While the court understands defendants' concerns about
21 maintaining the safety of other inmates who were interviewed as part of the appeal inquiry, their
22 names, inmate numbers, and housing locations have all been appropriately redacted from the
23 version that is ordered to be produced to plaintiff.

24 With these concerns in mind, the court will grant defendants' motion for a protective order
25 related to the disclosure of these documents. See ECF No. 63 at 7. Defendants are ordered to
26 produce the redacted documents responsive to plaintiff's Request for Production No. 4 within 14
27 days from the date of this order by allowing plaintiff to view these materials in a secure setting.
28 Said disclosure shall not permit plaintiff to photocopy or retain a copy of the documents in his

1 cell or to have an inmate helper present for his viewing of the documents.

2 **B. Defendants' Motion to Compel**

3 On September 30, 2021, defendants' filed a motion to compel plaintiff to respond to their
4 Request for Production of Documents ("RPD") which were served on July 26, 2021. Defense
5 counsel sent plaintiff a meet and confer letter concerning this discovery dispute on September 20,
6 2021, to which plaintiff has not responded. ECF No. 72 at 3. While plaintiff complied with
7 defendants' request for production of documents included as part of his Amended Deposition
8 Notice of September 29, 2021, defendants indicate that the requests are not the same. ECF No.
9 72 at 3.

10 Plaintiff filed an opposition to the motion indicating that he did not respond to defendants'
11 RPD by September 9, 2021 because the responsive documents were the same ones that
12 defendants had just disclosed in response to his RPD from June 21, 2021. ECF No. 75 at 12.
13 Moreover, defendants already had access to plaintiff's prison C-file and his medical records. Id.
14 Plaintiff argues that the motion is now moot and should be denied because he had documents
15 copied and delivered to the Litigation Coordinator at the prison in response to the document
16 request attached to his deposition notice. ECF No. 75. Additionally, plaintiff indicates that he
17 turned over all relevant inmate appeals demonstrating exhaustion of his issues prior to the parties'
18 first meet and confer for the purposes of ADR. ECF No. 75 at 5. Plaintiff's declaration in
19 opposition to the motion also describes several documents identified as Exhibits A-N, although
20 these documents are not attached to the opposition. See ECF No. 75 at 12-15.

21 In reply, defendants acknowledge receiving 450 pages of documents which were
22 separated by exhibit numbers in response to the document request that was attached to plaintiff's
23 deposition notice. ECF No. 82. Defendants argue that plaintiff should still be required to serve a
24 response to the RPD by "refer[ing] to the documents produced in conjunction with Defendants'
25 Deposition Notice, if they were produced at his deposition, and provide any additional documents
26 responsive to the RFPD which have not already been provided." ECF No. 82 at 3.

27 When a party fails to produce documents requested under Federal Rule of Civil Procedure
28 34, the party seeking discovery may file a motion to compel production. Fed. R. Civ. P. 37(a).

1 “The party seeking to compel discovery has the burden of establishing that its request satisfies the
2 relevancy requirements of Rule 26(b)(1). Thereafter, the party opposing discovery has the burden
3 of showing that the discovery should be prohibited, and the burden of clarifying, explaining or
4 supporting its objections.” Bryant v. Ochoa, No. 07-cv-0200 JM PCL, 2009 WL 1390794 at *1,
5 2009 U.S. Dist. LEXIS 42339 at *3 (S.D. Cal. May 14, 2009) (citations omitted). The court is
6 vested with broad discretion to manage the discovery process. See Hunt v. County of Orange,
7 672 F.3d 606, 616 (9th Cir. 2012). The court must limit discovery if “the discovery sought is
8 unreasonably cumulative or duplicative, or can be obtained from some other source that is more
9 convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i).

10 In this case, defendants are seeking to compel plaintiff to essentially cross-reference the
11 450 pages of documents he has already provided to them by identifying which of these documents
12 are responsive to their twelve individual requests for production of documents served on plaintiff
13 in July. While this may sound like an easy task to a trained litigator, the court is mindful that
14 plaintiff is a pro se prisoner with mental health issues who may not even have these documents in
15 his possession anymore due to limitations on the amount of legal work a prisoner may keep in his
16 cell. The court finds that requiring plaintiff to respond to the RPD at this juncture is
17 “unreasonably cumulative” and overly burdensome. See Fed. R. Civ. P. 26(b)(2)(C)(i).
18 Therefore, the court will deny defendants’ motion to compel.¹

19 **II. Motion for a Temporary Restraining Order**

20 **A. Plaintiff’s Motion**

21 In the motion, plaintiff contends that his access to the courts is being denied because
22 defendant Mims refused to make 10 sets of photocopies of his 150 exhibits in support of an
23 unidentified motion that he filed. Plaintiff generally describes these documents as “declarations
24 of witnesses, expert witnesses, policies and procedures, contract agreements, Marin General
25

26 ¹ In so ruling, the court does not condone plaintiff’s initial failure to respond to defendants’ RPD
27 or to defense counsel’s subsequent meet and confer letter. Plaintiff is reminded that even though
28 he is proceeding pro se, he must follow the same rules of procedure of other litigants. See King
v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (overruled on other grounds by Lacey v. Maricopa
Cnty., 693 F.3d 896 (9th Cir. 2012).

1 Hospital, San Joaquin General Hospital, and CDCR/CCHCS medical history.” ECF No. 78 at 5.
2 Plaintiff requests that the court conduct an in camera review of the documents to determine what
3 is relevant and admissible and also requests that CDCR be ordered to immediately photocopy the
4 exhibits. Attached to plaintiff’s motion are the legal copy verification forms that plaintiff
5 submitted requesting the photocopies for the instant case as well as two separate civil actions.
6 ECF No. 78 at 16-19. The photocopy requests were denied by A. Chaudry, the Senior Librarian
7 at CHCF, and not any of the defendants in the present action. Id. The denial forms indicate that
8 it is a “[m]assive photocopy request of about 10,000 copies” that “would prevent other inmates to
9 get their copies.” See ECF No. 78 at 18. The denials further cite Title 15 of the California Code
10 of Regulations § 3162(c) which limits legal photocopy requests to 50 pages or less “except when
11 necessary to advance litigation.” According to the denial forms, if “a court order is presented for
12 a need of over 50 pages, library staff would follow the court direction.” ECF No. 78 at 18.

13 Defendants filed an objection to plaintiff’s motion indicating that it was filed in
14 contravention of this court’s September 27, 2021 order limiting plaintiff’s filings in light of his
15 “voluminous, repetitious, and catch-all pleadings.” ECF No. 81.

16 **B. Legal Standards**

17 A temporary restraining order is an extraordinary and temporary “fix” that the court may
18 issue without notice to the adverse party if, in an affidavit or verified complaint, the movant
19 “clearly show[s] that immediate and irreparable injury, loss, or damage will result to the movant
20 before the adverse party can be heard in opposition.” See Fed. R. Civ. P. 65(b)(1)(A). A
21 preliminary injunction represents the exercise of a far-reaching power not to be indulged except
22 in a case clearly warranting it. Dymo Indus. v. Tapeprinter, Inc., 326 F.2d 141, 143 (9th Cir.
23 1964). “A preliminary injunction... is not a preliminary adjudication on the merits but rather a
24 device for preserving the status quo and preventing the irreparable loss of rights before
25 judgment.” Sierra On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d 1415, 1422 (9th Cir. 1984).

26 “The proper legal standard for preliminary injunctive relief requires a party to demonstrate
27 ‘that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
28 absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction

1 is in the public interest.” Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing
2 Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008) (internal quotations omitted).
3 The Ninth Circuit’s sliding-scale test for a preliminary injunction has been incorporated into the
4 Supreme Court’s four-part Winter’s standard. Alliance for Wild Rockies v. Cottrell, 632 F.3d
5 1127, 1131 (9th Cir. 2011) (explaining that the sliding scale approach allowed a stronger showing
6 of one element to offset a weaker showing of another element). “In other words, ‘serious
7 questions going to the merits’ and a hardship balance that tips sharply towards the plaintiff can
8 support issuance of an injunction, assuming the other two elements of the Winter test are also
9 met.” Alliance, 632 F.3d at 1131-32 (citations omitted). Additionally, in cases brought by
10 prisoners involving conditions of confinement, any preliminary injunction “must be narrowly
11 drawn, extend no further than necessary to correct the harm the court finds requires preliminary
12 relief, and be the least intrusive means necessary to correct the harm.” 18 U.S.C. § 3626(a)(2).

13 A motion for preliminary injunction must be supported by “[e]vidence that goes beyond
14 the unverified allegations of the pleadings.” Fidelity Nat. Title Ins. Co. v. Castle, No. C-11-
15 00896-SI, 2011 WL 5882878, *3 (N.D. Cal. Nov. 23, 2011) (citing 9 Wright & Miller, Federal
16 Practice & Procedure § 2949 (2011)). The plaintiff, as the moving party, bears the burden of
17 establishing the merits of his or her claims. See Winter v. Nat. Res. Def. Council, Inc., 555 U.S.
18 7, 20 (2008).

19 **C. Analysis**

20 Plaintiff’s motion suffers from a number of defects. Plaintiff’s motion only focuses on the
21 relief sought and does not address any of the factors required to obtain preliminary injunctive
22 relief. Plaintiff does not demonstrate how any of the factors identified in Winter tip in his favor
23 to support the issuance of a temporary restraining order. Furthermore, the individual whom
24 plaintiff seeks to compel is not a party to this civil action. The Senior Librarian at CHCF who
25 denied plaintiff’s photocopy requests is not a defendant in this case. This court is generally
26 unable to issue an order against individuals who are not parties to a suit pending before it. See
27 Zepeda v. United States Immigration & Naturalization Serv., 753 F.2d 719, 727 (9th Cir. 1985)
28 (stating that “[a] federal court may issue an injunction if it has personal jurisdiction over the

1 parties and subject matter over the claim; it may not attempt to determine the rights of persons not
2 before the court.”). Additionally, the substance of the TRO motion concerns plaintiff’s access to
3 prison photocopying services. However, the factual allegations in the complaint concern the use
4 of excessive force by defendants Nieves and Luang and the deliberate indifference to plaintiff’s
5 serious medical needs by defendants Mims, Aungst, and Abu. “When a plaintiff seeks injunctive
6 relief based on claims not pled in the complaint, the court does not have the authority to issue an
7 injunction.” Pac. Radiation Oncology, LLC v. Queen’s Medical Ctr, 810 F.3d 631, 633 (9th Cir.
8 2015). For all these reasons, the undersigned recommends denying plaintiff’s motion for a
9 temporary restraining order/preliminary injunction.

10 **III. Plain Language Summary for Pro Se Party**

11 The following information is meant to explain this order in plain English and is not
12 intended as legal advice.

13 The undersigned magistrate judge is recommending that your motion for a temporary
14 restraining order and preliminary injunction be denied. If you do not agree with this decision,
15 you have 14 days to explain why it is not correct. Label your explanation as “Objections to
16 Magistrate Judge’s Findings and Recommendations.” The district judge assigned to your case
17 will make the final decision on your motion for a preliminary injunction.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff’s reply briefs (ECF Nos. 83, 84) are stricken from the docket because they
20 were filed in violation of this court’s September 27, 2021 order.
- 21 2. Within fourteen days from the date of this order, defendants shall make available to
22 plaintiff all of the redacted documents (Bates No. 029-056) submitted for in camera
23 review by allowing him to view the documents in a secure setting. Said disclosure
24 shall **not** permit plaintiff to photocopy or retain a copy of the documents in his cell or
25 to have an inmate helper present for his viewing of the documents.
- 26 3. Within seven days of defendants’ compliance with this order, defendants shall file a
27 notice of production of documents attesting that service of the redacted documents has
28 occurred in accordance with the terms of this order. The notice shall include the date

1 of service of the documents.

2 4. Defendants' motion to compel (ECF No. 72) is denied.

3 5. The remaining pretrial motions deadline of January 3, 2022 remains in effect. See
4 ECF No. 49. The pretrial conference and trial dates will be set, as appropriate,
5 following resolution of any dispositive motion.

6 IT IS FURTHER RECOMMENDED that plaintiff's motion for a temporary restraining
7 order (ECF No. 78) be denied.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
13 objections shall be served and filed within fourteen days after service of the objections. The
14 parties are advised that failure to file objections within the specified time may waive the right to
15 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 Dated: November 29, 2021

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18 _____
19 CAROLYN K. DELANEY
20 UNITED STATES MAGISTRATE JUDGE

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