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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 BENJAMIN K. TOSCANO,
8 Plaintiff,
9 v.
10 G. D. LEWIS, et al.,
11 Defendants.

Case No. [12-cv-05893-EMC](#)

ORDER

Docket No. 323

12
13 Plaintiff has filed a motion for an injunction compelling prison officials to return or replace
14 his property. Docket No. 323. He states that on December 30, 2016, two non-defendant
15 correctional officials “broke [his] TV and confiscated it along with other property items” and his
16 legal documents for this case. *Id.* at 1. Plaintiff asserts that Defendants and defense counsel
17 “ordered PBSP officials to confiscate [his] legal documents . . . as retaliation and so [he] will not
18 be prepared for trial.” *Id.* Plaintiff does not explain the basis for his speculation that Defendants
19 or defense counsel had anything to do with the incident.

20 Plaintiff’s request for an injunction compelling the return of his television and other
21 personal property by the non-defendants is **DENIED**. Docket No. 323. That requested relief is
22 outside the scope of this action. As the Court earlier informed Plaintiff, the Court will not grant
23 injunctive relief for matters outside the scope of this action. *See* Docket No. 265 at 2.


24 Plaintiff’s request for the return of his legal property pertaining to the remaining claims in
25 this action is **DENIED** as premature and incomplete. Docket No. 323. Absent unusual and
26 compelling circumstances not shown to be present here, federal courts generally are discouraged
27 from interfering with day-to-day prison administration decisions. *See Turner v. Safley*, 482 U.S.
28 78, 84-85 (1987). Plaintiff filed his motion just four days after his legal materials allegedly were

1 confiscated. Before he seeks intervention in prison operations, Plaintiff needs to use the prison
2 administrative appeals process to try to obtain the return of the legal materials. If the materials
3 have not yet been returned to him, Plaintiff should pursue diligently a prison administrative appeal
4 to seek the return of that legal property and seek Court intervention only if that fails. Further,
5 Plaintiff needs to provide some evidence, rather than just unsubstantiated speculation, that
6 Defendants and defense counsel ordered the confiscation to retaliate and thwart his efforts in this
7 action, if he seeks court intervention on that basis. Because it may take time for his inmate appeal
8 to be processed, and to avoid consuming judicial resource with another premature motion, Plaintiff
9 may not file a new motion until thirty days after the date this order is filed. The Court recognizes
10 Plaintiff has a trial date in this matter and expects prison authorities will act on his appeals
11 promptly. If Plaintiff files a new motion, he must include with it a copy of his inmate appeal and
12 any response(s) thereto.

13 Although Defendants earlier filed a waiver of reply, as allowed by 42 U.S.C. § 1997e(g),
14 an answer will now be required due to the fact that this case has been set for trial. Within **thirty**
15 **(30) days** of the date of this order, the two remaining Defendants must file an answer, responding
16 to the allegations against them in the first amended complaint (Docket No. 20) and asserting any
17 affirmative defenses they have. *See* Fed. R. Civ. P. 8(b), (c).

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19 **IT IS SO ORDERED.**

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21 Dated: January 18, 2017

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24 EDWARD M. CHEN
25 United States District Judge
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