

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4 TODD ASHKER and DANNY TROXELL,

No. 09-05796 CW

5 Plaintiffs,

ORDER FOR FURTHER
BRIEFING ON
PLAINTIFFS'
MOTION FOR
PROTECTIVE ORDER
PROHIBITING
RETALIATORY ACTS
AND FOR RETURN OF
PROPERTY

6 v.

7 EDMUND G. BROWN, JR., et al.,

8 Defendants.
9 _____/

10
11 Pro se Plaintiffs Todd Ashker and Danny Troxell, inmates at
12 Pelican Bay State Prison (PBSP), move for a protective order
13 prohibiting retaliatory acts and for return of property. Defendants
14 have filed an opposition and Plaintiffs have filed a reply. The
15 matter was taken under submission on the papers. Having considered
16 all the papers filed by the parties, the Court denies the motion, in
17 part, and orders further briefing.

18 BACKGROUND

19 On June 6, 2011, PBSP Sergeants J. Frisk and J. Pieren and
20 Officers Morgan, Pimental and Knight of the Institutional Gang
21 Investigation Unit (IGI) searched Plaintiffs' cells and removed
22 Plaintiffs' papers, books, magazines, internet articles and personal
23 items. On June 15, 2011, Sgts. Frisk and Pieren returned some of
24 the items they had taken. Sgt. Pieren issued Mr. Ashker a serious
25 rule violation report, also known as a CDC Form 115, for having a
26 picture of a phoenix, which Sgt. Pieren states is a gang symbol.
27 Mr. Ashker claims it was an exhibit in one of his legal cases.

28 Plaintiffs state that the items are newspaper articles,

1 magazines and legal booklets that are important to this case and
2 letters, wall calendars, body lotion, and other personal items that
3 are not gang-related or related to this case. Plaintiffs claim that
4 the IGI officials retaliated against them for filing this lawsuit,
5 in violation of the First Amendment, and that they need a protective
6 order to prevent IGI officials from confiscating their legal
7 material in the future. Plaintiffs also seek an order requiring
8 Defendants to return their property to them. Defendants state that
9 they searched Plaintiffs' cells to ensure institutional security and
10 safety in light of the impending state-wide hunger strike.
11 Defendants claim that the IGI officials followed prison regulations
12 and properly confiscated altered magazines, altered clothing,
13 altered newspaper clippings and books and magazines possessed in
14 excess of institutional rules.

15 DISCUSSION

16 The Court notes that the IGI officials who confiscated
17 Plaintiffs' property are not named Defendants in this action and,
18 therefore, the Court does not have jurisdiction over them. No First
19 Amendment claim against these individuals can be brought in this
20 lawsuit. Similarly, Mr. Ashker's claim that the CDC Form 115
21 violation report was unwarranted would have to be litigated in a
22 separate lawsuit after he exhausted his administrative remedies.

23 However, the Court can determine if Plaintiffs' ability to
24 litigate this lawsuit is being impeded by the improper confiscation
25 of materials related to this action. Sgts. Frisk and Pieren state
26 that they confiscated many of the items because they were "altered."
27 However, they do not define, "altered," or indicate how the

1 "alteration" turns the items into contraband. They claim they
2 confiscated papers belonging to other inmates but do not explain how
3 they knew this to be the case, why that required confiscation and
4 what they did with the papers. Defendants cite PBSP regulations
5 that they claim allow the IGI officials to confiscate the items they
6 took from Plaintiffs. However, without more information about these
7 items, the Court cannot determine whether the IGI officials acted
8 properly. See 28 C.F.R. § 543.11(d)(2) (staff may allow inmate to
9 possess legal materials necessary for inmate's own legal actions;
10 staff may allow inmate to possess legal materials of another
11 inmate).

12 Therefore, Defendants are ordered to submit to the Court a
13 further explanation of the basis for confiscating any documents that
14 may be related to this case. They must describe the confiscated
15 materials individually, along with the factual and legal basis for
16 confiscation. If certain excess books or papers were placed in
17 storage, they must be logged. Defendants' explanation must be
18 submitted fourteen days from the date of this order. Plaintiffs may
19 respond within fourteen days thereafter.

20

21 IT IS SO ORDERED.

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23 Dated: 10/12/2011

24



CLAUDIA WILKEN
United States District Judge

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28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 TODD ASHKER et al,
5 Plaintiff,

Case Number: CV09-05796 CW

CERTIFICATE OF SERVICE

6 v.

7 ARNOLD SCHWARZENEGGER et al,
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on October 12, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Danny Troxell
16 Pelican Bay State Prison
17 B76578
18 P.O. Box 7500
19 D1-120
20 Crescent City, CA 95532

21 Todd Ashker C58191
22 Pelican Bay State Prison
23 P.O. Box 7500
24 D1-SHU
25 Crescent City, CA 95532

26 Dated: October 12, 2011

27 Richard W. Wieking, Clerk
28 By: Nikki Riley, Deputy Clerk