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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PAUL HUPP,

Plaintiff,

vs.

SAN DIEGO COUNTY DISTRICT
ATTORNEY; SAN DIEGO COUNTY
OFFICE OF ASSIGNED COUNSEL; SAN
DIEGO COUNTY SUPERIOR COURT;
SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT; SAN DIEGO POLICE
DEPARTMENT; JEFFREY HOWARD
FREEDMAN; JOHN SARGENT MEYER;
JAMES PATRICK ROMO; THEODORE
STEPHEN DR CAR; CHARLIE WETZEL;
WILLIAM J. KIERNAN; P. MEYER; and
ROES 1-10, individually, jointly, jointly and
severally,

Defendants.

CASE NO. 12-CV-492 - IEG (RBB)

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

[Doc. No. 20]

Presently before the Court is Plaintiff Paul Hupp ("Plaintiff")'s motion for a preliminary injunction. [Doc. No. 20.] For the reasons below, the Court **DENIES** the motion.

BACKGROUND

Plaintiff commenced this action on February 28, 2012 against Defendants San Diego County District Attorney ("SD DA"), San Diego County Office of Assigned Counsel ("SD OAC"), San Diego County Superior Court ("SD Superior Court"), San Diego County Sheriff's Department ("SD Sheriff's"), San Diego Police Department ("SDPD"), Jeffrey Howard Freedman

1 (“Freedman”), John Sargent Meyer (“Judge Meyer”), James Patrick Romo (“Romo”), Theodore
2 Stephen Drcar (“Drcar”), Charlie Wetzel (“Wetzel”), William J. Kiernan (“Kiernan”), and P.
3 Meyer (“P. Meyer”) alleging violations of his civil rights and state law tort claims. [Doc. No. 1.]
4 On April 2, 2012, Plaintiff filed a first amended complaint (“FAC”) asserting twelve causes of
5 action against these Defendants. [Doc. No. 4.]

6 The following facts are taken from the FAC. In November 2010, a trial court entered a
7 three year restraining order against Plaintiff restraining his contact with Defendant Freedman.
8 [FAC ¶ 27.] In July 2011, Freedman applied for contempt of court charges against Plaintiff based
9 on accusations that Plaintiff sent him three letters in violation of the restraining order. [Id. ¶ 28.]
10 The primary evidence used to support the contempt charges was the letters Freedman received.
11 [Id. ¶ 31.] Plaintiff alleges that these letters had no connection to him whatsoever. [Id.]

12 On November 16, 2011, Judge Meyer found Plaintiff guilty beyond a reasonable doubt of
13 violating the restraining order and sentenced Plaintiff to 25 days in custody and a \$5,000 fine.
14 [FAC ¶ 33.] Judge Meyer’s order stated: “Respondent is not entitled to any custody credits and
15 shall serve all 25 days with no early release, per court.” [Id.] On January 3, 2011, Plaintiff
16 reported to the SD Sheriff’s to serve his 25 day sentence. [Id. ¶ 38.] Plaintiff told the SD Sheriff’s
17 that they had to apply his custodial credits under California Penal Code § 4019, but the SD
18 Sheriff’s refused to apply them in accordance with Judge Meyer’s order. [Id.] Plaintiff alleges
19 Defendants’ refusal to apply his custodial credits under California Penal Code § 4019 violated his
20 Fourth and Fourteenth Amendment rights. [Id. ¶¶ 78-87.] Plaintiff also alleges that a criminal
21 action has been filed against him and is currently pending in state court. [Id. ¶ 128.]

22 By the present motion, Plaintiff moves for an injunction. [Doc. No. 20.] Plaintiff (1) seeks
23 to enjoin the SD Sheriff’s, SD Superior Court, and J. Meyer from denying Plaintiff his custodial
24 credits under California Penal Code § 4019; and (2) to enjoin his ongoing and future civil or
25 criminal prosecutions. [Id. at 2-3.] Defendants County of San Diego and Romo have filed a
26 response in opposition to Plaintiff’s motion for an injunction.

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1 **DISCUSSION**

2 **I. Legal Standard for a Motion for Preliminary Injunction**

3 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter
4 v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 376 (2008). “[P]laintiffs seeking a
5 preliminary injunction must establish that (1) they are likely to succeed on the merits; (2) they are
6 likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips
7 in their favor; and (4) a preliminary injunction is in the public interest.” Sierra Forest Legacy v.
8 Rey, 577 F.3d 1015, 1021 (9th Cir. 2009) (citing Winter, 129 S. Ct. at 374).

9 The grant or denial of a preliminary injunction is reviewed for abuse of discretion. Am.
10 Trucking Ass’ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). “[A] district
11 court necessarily abuses its discretion when it bases its decision on an erroneous legal standard or
12 on clearly erroneous findings of fact.” Id. “Stated differently, [a]s long as the district court [gets]
13 the law right, it will not be reversed simply because the appellate court would have arrived at a
14 different result if it had applied the law to the facts of the case.” Id. (internal quotation marks
15 omitted).

16 **II. Analysis**

17 **A. Likelihood of Success on the Merits**

18 Plaintiffs’ FAC contains twelve causes of action against the Defendants. [FAC ¶¶ 48-131.]
19 In Plaintiff’s motion for an injunction, he provides no substantive analysis demonstrating why he
20 will succeed on these claims. Therefore, Plaintiff has failed to establish that he is likely to succeed
21 on the merits of these claims. See, e.g., Sarantapoulas v. Recontrust Co., 2012 U.S. Dist. LEXIS
22 13467, at *3 (N.D. Cal. Feb. 3, 2012); Shaterian v. Wells Fargo Bank, 2011 U.S. Dist. LEXIS
23 62165, at *12 (N.D. Cal. Jun. 10, 2011) (“[A] plaintiff may not support a motion for a preliminary
24 injunction by merely pointing to his complaint and the facts alleged therein.”). Plaintiff’s motion
25 for a preliminary injunction can be denied on this basis alone. See Johnson v. California State Bd.
26 of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995) (“[E]ven if the balance of hardships tips
27 decidedly in favor of the moving party, it must be shown as an irreducible minimum that there is a
28 fair chance of success on the merits.”).

1 B. Plaintiff’s Request to Enjoin Defendants From Denying Him Custodial Credits
2 under California Penal Code § 4019

3 In Plaintiff’s first request for injunctive relief, he seeks an injunction against the SD
4 Superior Court, Judge Meyer, and SD Sheriff’s enjoining them from denying him his custodial
5 credits under California Penal Code § 4019. [Doc. No. 20 at 2-3.] Plaintiff alleges that on
6 November 16, 2011, in civil contempt proceedings, Judge Meyer issued a written order sentencing
7 Plaintiff to 25 days in state custody and stating that Plaintiff was not entitled to any custody
8 credits. [FAC ¶ 33.] Plaintiff further alleges that when he reported to the SD Sheriff’s on January
9 3, 2012 to serve his 25 day sentence, the SD Sheriff’s refused to apply his custodial credits in
10 accordance with Judge Meyer’s order. [Id. ¶ 38.] Plaintiff is no longer in the custody of the State
11 of California.¹

12 To obtain an injunction, a plaintiff must establish that a “real or immediate threat” exists
13 that he will be wronged again. City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983). The
14 alleged threat cannot be “conjectural” or “hypothetical.” Id. at 101-02. Therefore, where the
15 activities sought to be enjoined have already occurred, and the Court cannot undo what has already
16 been done, and there is no prospective harm to the plaintiff, the action is moot and no injunction
17 can be granted. ICR Graduate School v. Honig, 758 F. Supp. 1350, 1354-55 (S.D. Cal. 1991)
18 (citing Friends of the Earth v. Bengland, 576 F.2d 1377, 1379 (9th Cir. 1978)).

19 Plaintiff alleges that he was wrongfully denied his custodial credits under California Penal
20 Code § 4019 and forced to serve his full 25 day sentence. [FAC ¶¶ 33-41, 78-83.] Therefore, the
21 alleged harm has already occurred. Plaintiff’s FAC contains no allegations showing that Plaintiff
22 will be denied his custodial credits again in the near future. Accordingly, Plaintiff is not entitled to
23 an injunction enjoining the SD Superior Court, Judge Meyer, and SD Sheriff’s from denying him
24 his custodial credits under California Penal Code § 4019. See ICR Graduate School, 758 F. Supp.
25 at 1354-55.

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28 ¹ Both Plaintiff’s FAC and Plaintiff’s motion list Plaintiff’s current address as “965 Hidden
Oaks, Beaumont, CA 92223.”

1 C. Plaintiff's Request to Enjoin Ongoing and Future State Court Proceedings

2 In Plaintiff's second request for injunction relief, he requests an injunction against the SD
3 DA, the SD Superior Court, Romo, and Dracar enjoining all current and future civil or criminal
4 prosecutions against Plaintiff. [Doc. No. 20 at 3-7.] With respect to Plaintiff's request to enjoin
5 any future state court proceedings, as explained above, an injunction cannot be obtained when the
6 alleged harm is merely conjectural or hypothetical. See Lyons, 461 U.S. 101-02. The threat must
7 be real or immediate. Id. at 111. Therefore, Plaintiff is not entitled to an injunction enjoining
8 hypothetical future state court proceedings.

9 With respect to Plaintiff's request to enjoin his ongoing state court proceedings, under
10 principles of comity and federalism, a federal court should not interfere with ongoing state court
11 proceedings by granting injunctive or declaratory relief except under special circumstances.
12 Younger v. Harris, 401 U.S. 37, 43-54 (1971). Younger abstention is required when: (1) state
13 proceedings, judicial in nature, are pending; (2) the state proceedings involve important state
14 interests; and (3) the state proceedings afford adequate opportunity to raise the constitutional issue.
15 Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982); Dubinka v.
16 Judges of the Superior Court, 23 F.3d 218, 223 (9th Cir. 1994). Where a district court finds
17 Younger abstention appropriate, the court must dismiss claims for injunctive or declaratory relief.
18 See Judice v. Vail, 430 U.S. 327, 337 (1977); Dubinka, 23 F.3d at 226.

19 Plaintiff's action satisfies all three of the Younger requirements. First, Plaintiff alleges that
20 he is being subjected to ongoing criminal proceedings. [FAC ¶ 128; Doc. No. 20 at 3.] See
21 Dubinka, 23 F.3d at 223. Second, the Supreme Court has held that "a proper respect for state
22 functions," such as ongoing criminal trial proceedings, is an important issue of state interest. See
23 Preiser v. Rodriguez, 411 U.S. 475, 491-92 (1973) (quoting Younger, 401 U.S. at 44). Third,
24 Petitioner can pursue his constitutional claims in state court.

25 Plaintiff argues that he is entitled to an injunction because his criminal prosecution is being
26 brought in bad faith because there is no reasonable expectation that the state can obtain a valid
27 conviction. [Doc. No. 20 at 3.] The Supreme Court has explained that an injunction enjoining
28 state court criminal proceedings might be appropriate in cases of "proven harassment or

1 prosecutions undertaken by state officials in bad faith without hope of obtaining a valid
2 conviction.” Perez v. Ledesma, 401 U.S. 82, 85 (1971). Plaintiff has not provided the Court with
3 any evidence showing that there is no reasonable expectation that the state could obtain a valid
4 conviction in his state court proceedings. Plaintiff’s claim that the state cannot obtain a valid
5 conviction appears to be based on pure speculation, and Plaintiff is not entitled to an injunction
6 based on these speculative allegations. See, e.g., Collins v. California, 2011 U.S. Dist. LEXIS
7 152366, at *6-7 (C.D. Cal. Dec. 8, 2011). Therefore, the Court should abstain from interfering in
8 Plaintiff’s ongoing state court proceedings. See Younger, 401 U.S. at 45-46.


9 In addition, an injunction enjoining Plaintiff’s criminal proceedings would violate the Anti-
10 Injunction Act, which bars federal courts from enjoining state court proceedings. See 28 U.S.C. §
11 2283. Accordingly, Plaintiff is not entitled to an injunction enjoining his ongoing state court
12 proceedings.

13 **CONCLUSION**

14 In sum, Plaintiff is not entitled to the requested injunctive relief, and the Court **DENIES**
15 Plaintiff’s motion for a preliminary injunction.

16 **IT IS SO ORDERED.**

17 **DATED:** April 26, 2012

18 
19 **IRMA E. GONZALEZ**
20 **United States District Judge**

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