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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
10

11 LANCE WILLIAMS,  
12 CDCR #AG-2394,

13 Plaintiff,

14 v.

15 OFFICER O. NAVARRO; et al.,

16 Defendants.  
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Case No.: 3:18-cv-01318-DMS-RBM

**SUPPLEMENT TO REPORT AND  
RECOMMENDATION OF U.S.  
MAGISTRATE JUDGE DATED JULY  
9, 2019 RE: PLAINTIFF'S ADDENDUM  
TO MOTION FOR PROTECTIVE  
ORDER AND/OR INJUNCTIVE  
RELIEF**

[Docs. 20, 23]

20  
21 **I. INTRODUCTION**

22 Lance Williams ("Plaintiff"), a prisoner proceeding *pro se* and *in forma pauperis*,  
23 filed a civil rights action pursuant to 42 U.S.C. § 1983 ("Section 1983") against several  
24 staff members at the Richard J. Donovan Correctional Facility ("RJD") in San Diego,  
25 California. (*See generally* Docs. 1, 17.) On June 14, 2019, Plaintiff filed a "Notice/Motion  
26 for Protective Order and or Injunctive Relief upon Defendant C. Tiscornia" ("Motion" or  
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1 “Underlying Motion”).<sup>1</sup> (Doc. 20.) On July 9, 2019, the Court issued a Report and  
2 Recommendation recommending denial of the Motion without prejudice (“R&R”). (Doc.  
3 21.) Immediately after issuance of the R&R, the Court received Plaintiff’s “Addendum to  
4 Notice/Motion for Protective Order and or Injunctive Relief upon Defendant C. Tiscornia”  
5 (“Addendum” or “Addendum to Motion”), which the Court accepted *nunc pro tunc* to July  
6 8, 2019.<sup>2</sup> (Docs. 22-23.)

7 In light of new allegations presented in the Addendum, the Court supplements its  
8 July 9, 2019 R&R to analyze same. Notwithstanding the additional information, this Court  
9 respectfully recommends Plaintiff’s Underlying Motion and Addendum to Motion be  
10 **DENIED**, without prejudice. (Docs. 20, 23.)

## 11 II. PROCEDURAL HISTORY

12 The July 9, 2019 R&R recommends denial of Plaintiff’s Underlying Motion, wherein it  
13 analyzes the allegations in Plaintiff’s Complaint and Underlying Motion. (Doc. 21.) A  
14 brief summary of same is set forth herein.

15 Plaintiff’s Complaint names twelve defendants, including Law Library Clerk C.  
16 Tiscornia (“Tiscornia”), and asserts three Section 1983 causes of action for First and Eighth  
17 Amendment violations. (Doc. 1.) As against Tiscornia, Plaintiff alleges Tiscornia denied  
18 Plaintiff access to the law library (i.e., a First Amendment access to courts cause of action)  
19 and denied Plaintiff adequate out-of-cell time in granting Plaintiff access to the law library  
20 only during his scheduled yard time (i.e., an Eighth Amendment cause of action). (*Id.* at  
21 4, 9-11.) Although Plaintiff’s Complaint asserts multiple causes of action against multiple  
22 Defendants, the character of relief requested in the Underlying Motion seeks increased law  
23 library access, which solely relates to the First Amendment cause of action. (*See generally*,

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25 <sup>1</sup> On June 21, 2019, the Court accepted Plaintiff’s Underlying Motion *nunc pro tunc* to June 14, 2019,  
26 notwithstanding discrepancies in the Motion. (Doc. 19.)

27 <sup>2</sup> Although the Clerk of Court received Plaintiff’s Addendum to Motion on July 8, 2019, the Court did  
28 not receive notice of the Addendum until after issuance of its R&R on July 9, 2019, due to the  
Addendum’s filing discrepancy. (Doc. 22.) On July 9, 2019, the Court issued an Order accepting the  
Addendum *nunc pro tunc* to July 8, 2019. (Doc. 22.)

1 Doc. 20.) As such, the Court’s July 9, 2019 R&R focused its analysis on this single cause  
2 of action against Tiscornia. (Doc. 21, 5-8 (citing *Pac. Radiology Oncology, LLC v.*  
3 *Queen’s Med. Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015) (a threshold requirement for  
4 injunctive relief requires a nexus “between the injury claimed in the motion . . . and the  
5 conduct asserted in the underlying complaint . . .”).)

6 A. Underlying Motion

7 Plaintiff’s Motion alleged that Tiscornia reads Plaintiff’s legal material and refuses  
8 to comply with Plaintiff’s photocopy requests in retaliation against Plaintiff for filing the  
9 instant lawsuit. (Doc. 20, 1.) Plaintiff requested an order requiring: (1) Tiscornia’s  
10 removal and replacement from the A-yard law library “before she falsifies a [Rules  
11 Violation Report] against [P]laintiff which she has a history of doing to inmates”; (2)  
12 Tiscornia to “stop reading, asking where it’s going ‘legal copies’ and she do her job of  
13 making sure copies are not inappropriate material”; (3) Tiscornia to issue law library passes  
14 to Plaintiff “everyday [sic] it’s open for both [AM] and [PM] hours” and to comply with  
15 all of Plaintiff’s copy requests; (4) Tiscornia to provide unlimited supplies of paper,  
16 envelopes, exhibit sheets and immediately restore typewriter access to the law library, and;  
17 (4) Tiscornia to recognize Plaintiff’s “priority legal user” status to the law library. (*Id.* at  
18 2-3.)

19 The Court’s July 9, 2019 R&R recommended denial of the Underlying Motion on  
20 two grounds. (Doc. 21.) First, the Court reasoned it could not issue preliminary injunctive  
21 relief until each Defendant is provided with notice and an opportunity to be heard on same.  
22 (*Id.* at 6 (citing Fed. R. Civ. P. 65(a)(1); *Armstrong v. Brown*, 768 F.3d 975, 979-980 (9th  
23 Cir. 2014)). Second, the Court concluded Plaintiff did not carry his burden of persuasion  
24 for issuance of a preliminary injunction because Plaintiff failed to demonstrate a likelihood  
25 of success on the merits of his underlying cause of action for denial of access to the courts.  
26 (Doc. 21, 6-10.) Specifically, the Court concluded Plaintiff failed to demonstrate any  
27 actual injury with respect to contemplated or existing litigation, a showing which is  
28 required to establish an access to courts cause of action. (Doc. 21, 7-10 (citing *Lewis v.*

1 *Casey*, 518 U.S. 343, 348 (1996)).

2 B. Addendum to Motion

3 Plaintiff's Addendum contains several allegations duplicative of those set forth in  
4 the Underlying Motion, including that his access to the law library has been limited to less  
5 than the "required minimum" number of hours, RJD staff threatens Plaintiff with Rules  
6 Violation Reports ("RVR"), and he missed court deadlines because his access to the library  
7 is limited. (Doc. 23, 1-2, 4.)

8 The entirely new allegation presented in the Addendum relates to Tiscornia's RVR  
9 issued against Plaintiff and dated June 26, 2019, which occurred *after* Plaintiff filed the  
10 Underlying Motion. (Doc. 23, 2 & Ex. A, 5-7.) On June 26, 2019, Plaintiff had a scheduled  
11 medical pass, but he visited the law library instead. (*Id.* at 2 & Ex. A, 6.) Tiscornia  
12 instructed Plaintiff to exit the law library, advising Plaintiff he could only visit the library  
13 during Plaintiff's scheduled yard time. (*Id.*) The RVR cites Plaintiff for being "out of  
14 bounds" and states Tiscornia felt intimidated by Plaintiff when she heard Plaintiff arguing  
15 with another officer regarding Plaintiff's access to the library. (*Id.* at Ex. A, 6-7.) Plaintiff  
16 claims Tiscornia's RVR is false and made in retaliation against Plaintiff for filing the  
17 instant litigation. (Doc. 23, 2-3.) Plaintiff claims Tiscornia never previously enforced the  
18 "underground rule" regarding library access being granted only during scheduled yard time  
19 and it violates Plaintiff's Eighth Amendment rights because it requires Plaintiff to choose  
20 between using out-of-cell time for exercise or law library use. (*Id.* (citing *Kaufman v.*  
21 *Schneiter*, 474 F. Supp. 2d 1014, 1030 (W.D. Wis. 2007).) Plaintiff allegedly received  
22 threats from other RJD staff cautioning Plaintiff to "stop harassing . . . Tiscornia" and stop  
23 filing grievances and litigation. (*Id.* at 3-4.)

24 Notwithstanding the new factual allegations presented above, the relief requested in  
25 Plaintiff's Addendum only seeks Tiscornia's removal from the law library to: (1) prevent  
26 Tiscornia from reading Plaintiff's litigation material related to this case; and (2) allow  
27 Plaintiff to access the library without being threatened with an RVR based upon Tiscornia's  
28 false allegations of Plaintiff's misconduct. (*Id.* at 3-4.)

1 **III. REQUEST FOR INJUNCTIVE RELIEF**

2 In accordance with the Court’s July 9, 2019 R&R, Plaintiff’s Addendum is construed  
3 as a request for preliminary injunctive relief, as he requests relief without any durational  
4 limit. (Doc. 21, 4-5.) A threshold requirement for preliminary injunctive relief is “a  
5 relationship between the injury claimed in the motion for injunctive relief and the conduct  
6 asserted in the underlying complaint . . . .” *Pac. Radiology Oncology, LLC, supra*, 810  
7 F.3d at 636. Here, the character of relief requested in Plaintiff’s Addendum essentially  
8 requests access to the law library without active interference by Tiscornia, which seeks  
9 relief of the same nature as the access to courts cause of action in the Complaint. While  
10 Plaintiff’s Addendum claims Tiscornia engages in retaliatory conduct against Plaintiff,  
11 there is no basis to analyze the merits of an injunction on this ground because the Complaint  
12 does not assert a retaliation cause of action against Tiscornia. *Id.*; *see also De Beers*  
13 *Consol. Mines v. U.S.*, 325 U.S. 212, 220 (1989) (there is no basis to grant an injunction  
14 when the injunction “deals with a matter lying wholly outside the issues in the suit.”).  
15 Therefore, in analyzing the merits of issuing an injunction, the Court only considers  
16 Plaintiff’s requested relief which relates to Plaintiff’s First Amendment access to courts  
17 cause of action against Tiscornia.

18 A. Notice and an Opportunity to be Heard

19 As noted above, the Court recommended denial of the Underlying Motion because  
20 preliminary injunctive relief cannot be issued until all Defendants are provided with notice  
21 and an opportunity to be heard. Fed. R. Civ. P. 65(a)(1); *Armstrong*, 768 F.3d at 979-980.  
22 As of July 9, 2019 (i.e., the R&R filing date), there was no docket entry reflecting service  
23 of summons and the Complaint on any Defendant. (Doc. 20, 6, ll. 2-3.) Seven days later,  
24 Waivers of Service were filed for seven of the twelve named Defendants.<sup>3</sup> (Docs. 24-30.)

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27 <sup>3</sup> Waivers of Service are on file for the following Defendants: Correction Officers O. Navarro  
28 (“Navarro”), Garsilaso (“Garsilaso”), C. Bagnol (“Bagnol”); [Sergeant] Corrections Officer F. Lewis  
 (“Lewis”); Senior Psychologist of EOP R. Katyall; Clinician Case Manager S. Knittman; and Tiscornia.

1 Most recently, summonses were returned unexecuted for the remaining named  
2 Defendants.<sup>4</sup> (Docs. 31-35.) At this time, no Defendant has formally appeared in the  
3 action. Plaintiff's Addendum is premature based upon the same grounds in the Court's  
4 July 9, 2019 R&R, as Plaintiff fails to allege any facts demonstrating the necessity of  
5 issuing an injunction without an opportunity for a hearing.

6 B. Factors to Consider for Issuing Injunctive Relief

7 Although Plaintiff presented new allegations to support his request for injunctive  
8 relief, Plaintiff still fails to satisfy his burden of persuasion for issuance of preliminary  
9 injunctive relief. *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). A party requesting  
10 injunctive relief must demonstrate four factors: "[plaintiff] is likely to succeed on the  
11 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
12 the balance of equities tips in his favor, and that an injunction is in the public interest."  
13 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Stormans, Inc. v.*  
14 *Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter*).

15 To succeed on the merits of an access to courts cause of action, the prisoner must  
16 establish he suffered an actual injury, which is "actual prejudice with respect to  
17 contemplated or existing litigation, such as the inability to meet a filing deadline or present  
18 a claim." *Lewis*, 518 U.S. at 348 (citation and internal quotations omitted). Specifically,  
19 the inmate must demonstrate alleged shortcomings in the library "hindered his efforts to  
20 pursue a legal claim." *Id.* at 351; *see also Alvarez v. Hill*, 518 F.3d 1152, 1155 n.1 (9th  
21 Cir. 2008) (explaining "[f]ailure to show a non-frivolous legal claim has been frustrated is  
22 fatal" to a claim for denial of access to legal materials) (citing *Lewis*, 518 U.S. at 353 n. 4).

23 Plaintiff's Addendum requests Tiscornia's removal from the law library to prevent  
24 Tiscornia from reading Plaintiff's litigation material. (Doc. 23 at 3.) But Plaintiff does not  
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27 <sup>4</sup> Summonses have been returned unexecuted for the following Defendants: E. Estrada ("Estrada"); A-  
28 yard [Building] # 2 Staff; Correctional Counselor [One] Hall ("Hall"); Litigation [Department] of RJD  
("Litigation Department"); and RJD EOP Scheduling Dept.

1 identify when Tiscornia’s reading of Plaintiff’s litigation material occurred, what was  
2 reviewed, or how this violated Plaintiff’s constitutional rights other than claiming it  
3 “violates [Plaintiff’s] legal work product confidentiality . . . .” (*Id.* at 4.) Plaintiff cites no  
4 caselaw or authority that prisoners have any privilege, right to confidentiality, or right to  
5 privacy in materials being copied at the law library. *Lopez*, 680 F.3d at 1072 (preliminary  
6 injunctive relief “should not be granted unless the movant, *by a clear showing*, carries the  
7 burden of persuasion.”). Moreover, Plaintiff’s request improperly asks the federal court to  
8 intervene in the operation and management of prisons which “is not the role of courts, but  
9 that of the political branches, to shape the institutions of government in such fashion as to  
10 comply with the laws and the Constitution.” *Lewis*, 518 U.S. at 349; *see also Pratt v.*  
11 *Rowland*, 65 F.3d 802, 806 (9th Cir. 1995) (citing *Sandin v. Conner*, 115 U.S. 472, 482-  
12 483 (1995)). In any event, Plaintiff fails to allege facts claiming Tiscornia’s reading  
13 Plaintiff’s litigation materials hindered his efforts to pursue a legal claim or caused “actual  
14 injury” with respect to existing or contemplated litigation, which is a required showing to  
15 establish an access to courts cause of action. *Lewis*, 518 U.S. at 351. As such, injunctive  
16 relief should not be issued because Plaintiff failed to demonstrate a likelihood of success  
17 on the merits of his access to courts cause of action.

18 Plaintiff also claims Tiscornia should be removed from the library because she  
19 threatens him with RVRs and falsely accuses him of wrongdoing. (Doc. 23 at 3-4.) While  
20 a nexus exists between this request for relief and the underlying access to courts cause of  
21 action, Plaintiff still fails to demonstrate that Tiscornia’s conduct caused actual injury to  
22 existing or contemplated litigation. *Pac. Radiology Oncology, LLC, supra*, 810 F.3d at  
23 636; *see Silva v. Di Vittorio*, 658 F.3d 1090, 1102-1104 (9th Cir. 2011) (an access to courts  
24 claim alleging active interference by prison officials requires a showing of actual injury as  
25 a result of such interference) *overruled on other grounds, Richey v. Dahne*, 807 F.3d 1202,  
26 1209 n. 6 (9th Cir. 2015).

27 While Tiscornia issued an RVR against Plaintiff on June 26, 2019, there are no facts  
28 demonstrating Plaintiff’s ability to pursue a legal claim has been hindered. (Doc. 23, 3

1 [stating, “this fabricated RVR effects plaintiffs [sic] liberty interest in multiple ways if  
2 plaintiff is found guilty . . . .”] (emphasis added.); *Lewis*, 518 U.S. at 351-352 (speculative  
3 injury does not vest standing). Rather, it appears Plaintiff is continuing to access the law  
4 library, litigate and file grievances each time he believes his constitutional rights are  
5 violated. (*See generally*, Doc. 23 at Ex. C [Inmate Appeal containing allegations against  
6 Tiscornia].) Lacking any showing of actual injury resulting from Tiscornia’s RVR,  
7 Plaintiff’s Addendum fails to demonstrate a likelihood of success on the merits of his  
8 access to courts cause of action.

9 Given that Plaintiff’s Addendum fails to demonstrate a likelihood of success on the  
10 merits of his underlying cause of action, it is unnecessary to consider the three remaining  
11 *Winter* factors for preliminary injunctive relief. *Garcia v. Google, Inc.*, 786 F.3d 733, 740  
12 (9th Cir. 2015).

#### 13 **IV. CONCLUSION**

14 The Court respectfully submits this Supplement to its Report and Recommendation  
15 dated July 9, 2019, to United States District Judge Dana M. Sabraw pursuant to 28 U.S.C.  
16 § 636(b)(1)(B) and Local Civil Rule 72.1(c)(1)(a). For the reasons set forth above, **IT IS**  
17 **HEREBY RECOMMENDED** that the Court issue an order (1) approving and adopting  
18 this Supplement to Report and Recommendation dated July 9, 2019; and (2) **DENYING**  
19 Plaintiff’s Motion for Protective Order and or Injunctive Relief and Addendum to Motion  
20 for Protective Order and or Injunctive Relief without prejudice (Docs. 20, 23).

21 **IT IS ORDERED** that no later than **August 28, 2019**, any parties to this action may  
22 file written objections with the Court and serve a copy on all parties. The document should  
23 be captioned “Objections to Report and Recommendation.”

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1           **IT IS FURTHER ORDERED** that any reply to the objections shall be filed with  
2 the Court and served on all parties no later than **September 27, 2019**. The parties are  
3 advised that failure to file objections within the specified time may waive the right to raise  
4 those objections on appeal of the Court's Order. *See Turner v. Duncan*, 158 F.3d 449, 455  
5 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156 (9th Cir. 1991).

6           **IT IS SO ORDERED.**

7 DATE: July 29, 2019

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9 HON. RUTH BERMUDEZ MONTENEGRO  
10 United States Magistrate Judge  
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