

1

2

3

4

5

6

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

7

8

9 PERCY LAVAE BACON,

10 Plaintiff,

11 vs.

12 OSWALD REYES, et al.,

13 Defendants.

Case No. 2:12-cv-01222-JCM-VCF

**ORDER**

14

15 Presently before the court is pro se prisoner plaintiff Percy Lavae Bacon's motion for a  
16 temporary restraining order. (Doc. # 94).

**I. Background**

18 This is the fourth motion for a temporary restraining order this plaintiff has filed in this case  
19 alone. Plaintiff has sought the following relief via a temporary restraining order: (1) placement at a  
20 medical facility that could immediately give plaintiff a kidney transplant (doc. # 5); (2) plaintiff be  
21 allowed to personally microwave his own food (doc. # 22); and, (3) that he be provided with more  
22 toilet paper each week (doc. # 27). In this motion for a temporary restraining order, plaintiff seeks  
23 immediate access to the prison law library.

**II. Legal Standard**

25 According to Federal Rule of Civil Procedure 65, a court may issue a temporary restraining  
26 order when the moving party provides specific facts showing that immediate and irreparable injury,  
27 loss, or damage will result before the adverse party's opposition to a motion for preliminary  
28 injunction can be heard. Fed. R. Civ. P.65. "The purpose of a temporary restraining order is to

1 preserve the status quo before a preliminary injunction hearing may be held; its provisional remedial  
2 nature is designed merely to prevent irreparable loss of rights prior to judgment.” *Estes v. Gaston*,  
3 no. 2:12-cv-1853-JCM-VCF, 2012 WL 5839490, at \*2 (D. Nev. Nov. 16, 2012) (citing *Sierra On-*  
4 *Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984)). “Thus, in seeking a  
5 temporary restraining order, the movant must demonstrate that the denial of relief will expose him  
6 to some significant risk of irreparable injury.” *Id.* (quoting *Associated Gen. Contractors of*  
7 *California v. Coalition of Economic Equity*, 950 F.2d 1401, 1410 (9th Cir. 1991)).<sup>1</sup>

### 8 **III. Discussion**

9 Plaintiff moves the court to require the Southern Desert Correction Center to permit plaintiff  
10 physical access to the law library every Monday, Tuesday, and Friday, from 8:00 AM to 10:30 AM,  
11 from the date the instant motion was filed until the resolution of this lawsuit. Plaintiff essentially  
12 seeks more time in the prison law library.

13 Plaintiff must establish real and immediate irreparable harm before this court may grant a  
14 temporary restraining order. Plaintiff has not met that high burden. Based on the facts presented,  
15 plaintiff’s alleged injuries do not establish the requisite immediacy to warrant a temporary  
16 restraining order. Temporary restraining orders are mechanism for the court to deal with real,  
17 immediate, and serious risks and injuries. This motion simply does not rise to that level, and the  
18 court further finds that there is not a high enough likelihood of success on the merits to grant a  
19 temporary restraining order.

20 When considering penological interests, the court should first determine the reasonableness  
21 of the regulation. *See Turner v. Safely*, 482 U.S. 78, 89-90 (1987). Because plaintiff filed the  
22 instant motion seeking a temporary restraining order, the prison has not yet had the opportunity to  
23 justify its policies regarding access to the prison law library. However, plaintiff also filed the exact  
24 same motion seeking a preliminary injunction. (*See doc. # 95*). The court finds it appropriate to

---

25  
26 <sup>1</sup>

27 The Supreme Court has stated that courts must consider the following factors in determining whether to issue a temporary  
28 restraining order and preliminary injunction: (1) a likelihood of success on the merits; (2) likelihood of irreparable injury  
if preliminary relief is not granted; (3) balance of hardships; and (4) advancement of the public interest. *Winter v. N.R.D.C.*,  
129 S. Ct. 365, 374–76 (2008).

1 permit the prison to respond to these allegations via the normal briefing schedule of a preliminary  
2 injunction.

3 **IV. Future Filings With This Court**

4 Plaintiff filed this action with the court on July 10, 2012. It is less than one year old. To  
5 date, plaintiff has filed approximately forty-two (42) motions on a docket with ninety-five (95)  
6 entries. This includes the four motions for temporary restraining orders. Additionally, the plaintiff  
7 has filed objections or an order for the district judge to reconsider every single order entered by  
8 the magistrate judge in this case.

9 The court notes that this plaintiff has “struck out” under the Prison Litigation Reform Act.  
10 He has filed more than three actions that were dismissed for being frivolous, malicious or failed to  
11 state a claim. *See Percy Lavae Bacon v. Stephen C. Webster et al*, no. 2:05-cv-01267-PMP-GWF;  
12 *Bacon v. Laswell*, no. 2:09-cv-02058-PMP-PAL; *Bacon v. State of Nevada*, no. 2:10-cv-01451-  
13 KJD-LRL. Additionally, the Nevada Supreme Court has deemed this plaintiff a vexatious litigant  
14 because he submitted at least 108 appeals with that court.

15 The court does not exist solely to decide this plaintiff’s excessive filings. *See De Long v.*  
16 *Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990) (“Flagrant abuse of the judicial process cannot be  
17 tolerated because it enables one person to preempt the use of judicial time that properly could be  
18 used to consider the meritorious claims of other litigants.”).

19 Due to this plaintiff’s frivolous and numerous filings with the court, the plaintiff must seek  
20 leave of the court to file any further motions with the court in this case. The request may be no  
21 more than two pages in length and state the relief sought and why plaintiff is entitled to any relief.

22 Accordingly,

23 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff’s motion for a  
24 temporary restraining order (doc. # 94) be, and the same hereby, is DENIED.

25 ...

26 ...

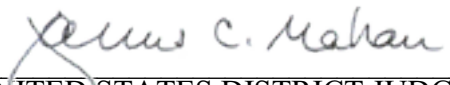
27 ...

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS FURTHER ORDERED that, due to the plaintiff's frivolous and numerous filings in this case, the defendant must request leave of the court to file any further motions with the court in this case. The request may be no more than two pages and state the relief sought and the reason he is entitled to such relief.

DATED June 28, 2013.

  
UNITED STATES DISTRICT JUDGE