IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

TIMOTHY DENVER GUMM,	:	
	:	
Plaintiff.	:	
	:	
v.	:	
	:	
Warden BRUCE CHATMAN,	:	**NO. 5:15-cv-41-MTT-CWH**
Et al.,	:	
Defendants.	:	
	:	**ORDER & RECOMMENDATION**

Plaintiff Timothy Denver Gumm, who is confined in the Special Management Unit ("SMU") at the Georgia Diagnostic and Classification Prison, has filed a *pro se* civil rights complaint under 42 U.S.C. § 1983 (ECF No. 1). Plaintiff alleged due process violations in connection with his confinement in the SMU. On March 18, 2015, the Court conducted a preliminary review of Plaintiff's complaint, as required by 28 U.S.C § 1915A, and ordered service of said complaint on the four named Defendants (ECF No. 6). The Defendants have not yet filed an answer or other responsive pleading.

Presently pending before the Court are two motions filed by Plaintiff. In his first motion (ECF No. 11), Plaintiff seeks to amend his complaint to clarify it. In his second motion (ECF No. 13), entitled "Motion to Compel," Plaintiff asks the Court to compel the Defendants to provide him with the same access to legal research materials as afforded to inmates in the general population. The Court construes Plaintiff's "Motion to Compel" as

a motion for preliminary injunctive relief.

Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend "once as a matter of course" a pleading to which a response is required within 21 days after service of the response. As the Defendants have not yet filed an answer or other responsive pleading to Plaintiff's complaint, Plaintiff's motion to amend is **GRANTED** and his complaint is deemed amended.

Regarding Plaintiff's second motion, injunctive relief may be granted only if the movant shows that: (1) his case has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest. *This That and Other Gift and Tobacco, Inc. v. Cobb Cnty, Ga.*, 285 F.3d 1319, 1321-22 (11th Cir. 2002). In *All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp.*, 887 F.2d 1535, 1537 (11th Cir. 1989) (quotation omitted), the Eleventh Circuit Court of Appeals stated that a "preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly establishes the 'burden of persuasion' as to the four requisites."

At a minimum, Plaintiff has fails to satisfy the first two requisites for injunctive relief. Whether Plaintiff's motion is viewed as presenting an access to courts claim or an equal protection claim, there is no indication that Plaintiff will succeed on the merits or that he is facing irreparable injury.

An access to courts claim must allege "actual injury" relating to prospective or existing litigation, such as "missing filing deadlines or being prevented from presenting claims," while "in the pursuant of specific types of nonfrivolous cases …" *Wilson v. Blankenship*, 163 F.3d 1284, 1290 & n.10 (11th Cir. 1998); *see also Lewis v. Casey*, 518 U.S. 343, 349 (1996). Plaintiff fails to specify any injury resulting from the denial of research materials. Indeed, Plaintiff appears to have had no impediments to his filings in the instant action.

"To establish an equal protection claim, a prisoner must demonstrate that: (1) he is similarly situated with other prisoners who received more favorable treatment; and (2) his discriminatory treatment was based on some constitutionally-protected interest ..." *Jones v. Ray*, 279 F.3d 944, 946-47 (11th Cir. 2001) (per curiam). Plaintiff has not alleged that his discriminatory treatment was based on a constitutionally protected interest. Instead, Plaintiff merely compares himself with inmates in the general population.

"Because injunctions regulate future conduct, a party has standing to seek injunctive relief only if the party alleges, and ultimately proves, a real and immediate – as opposed to a merely conjectural or hypothetical – threat of *future* injury." *Wooden v. Board of Regents of University System of Georgia*, 247 F.3d 1262, 1284 (11th Cir. 2007). Plaintiff has alleged no such real and immediate threat.

For the above reasons, the undersigned finds that Plaintiff has failed to satisfy the requisites necessary for an injunction to issue. It is thus **RECOMMENDED** that

Plaintiff's request for injunctive relief be **DENIED**. Pursuant to 28 U.S.C. § 636(b)(1), the parties may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge shall make a de novo determination as to those portions of the Recommendation to which objection is made; all other portions of the Recommendation may be reviewed by the District Judge for clear error.

The parties are hereby notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice."

SO ORDERED AND RECOMMENDED, this 21st day of May, 2015.

s/ Charles H. Weigle
Charles H. Weigle
United States Magistrate Judge