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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8  
9 Keith P. Nance,

10 Plaintiff,

11 v.

12 Allen Miser, et al.

13 Defendants.

No. CV-12-0734-PHX-RCB (DKD)

**ORDER**

14 Plaintiff Keith P. Nance an inmate confined by the Arizona Department of  
15 Corrections (ADC), filed this *pro se* civil rights action regarding denial of a Halal diet  
16 and shaving waiver in violation of his religious exercise rights. (Doc. 9, First Amend.  
17 Compl. (FAC).) Defendants moved for summary judgment, which the Court denied.  
18 (Docs. 54, 69.)

19 Plaintiff now files a Motion for Prospective Relief and Temporary Restraining  
20 Order regarding alleged retaliation for filing this lawsuit, which Defendants oppose.  
21 (Docs. 73, 77.) The Court will deny the motion.

22 **I. Motion**

23 **A. Legal Standard**

24 A preliminary injunction is an extraordinary and drastic remedy and “one that  
25 should not be granted unless the movant, by a clear showing, carries the burden of  
26 persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) (quoting 11A  
27 C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948, pp. 129-130  
28 (2d ed. 1995)). An injunction may be granted only where the movant shows that “he is

1 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence  
2 of preliminary relief, that the balance of equities tips in his favor, and that an injunction is  
3 in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);  
4 *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009).  
5 The movant has the burden of proof on each element of the test. *Environmental Council*  
6 *of Sacramento v. Slater*, 184 F. Supp. 2d 1016, 1027 (E.D. Cal. 2000). A Request for a  
7 TRO is governed by the same general standards that govern the issuance of a preliminary  
8 injunction. *See New Motor Vehicle Bd. v. Orrin W. Fox. Co.*, 434 U.S. 1345, 1347 n. 2  
9 (1977); *Los Angeles Unified Sch. Dist. v. U.S. Dist. Court*, 650 F.2d 1004, 1008 (9th Cir.  
10 1982).

11 A preliminary injunction is appropriate under the sliding-scale test when a plaintiff  
12 demonstrates that “serious questions going to the merits were raised and the balance of  
13 hardships tips sharply in [plaintiff’s] favor.” *Alliance for the Wild Rockies v. Cottrell*,  
14 632 F. 3d 1127, 1134-35 (9th Cir. 2011), citing *Lands Council v. McNair*, 537 F.3d 981,  
15 987 (9th Cir. 2008) (en banc). This approach requires that the elements of the  
16 preliminary injunction test be balanced, so that a stronger showing of one element may  
17 offset a weaker showing of another. “[S]erious questions going to the merits’ and a  
18 balance of hardships that tips sharply towards the plaintiff can support issuance of a  
19 preliminary injunction, so long as the plaintiff also shows that there is a likelihood of  
20 irreparable injury and that the injunction is in the public interest.” *Id.* at 1135.

21 The Prison Litigation Reform Act (PLRA) also imposes requirements regarding  
22 preliminary injunctive relief against prison officials. “Preliminary injunctive relief must  
23 be narrowly drawn, extend no further than necessary to correct the harm the court finds  
24 requires preliminary relief, and be the least intrusive means necessary to correct that  
25 harm.” 18 U.S.C. § 3626(a)(2). Thus, § 3626(a)(2) limits the court’s power to grant  
26 preliminary injunctive relief to inmates; “no longer may courts grant or approve relief  
27 that binds prison administrators to do more than the constitutional minimum.” *Gilmore v.*  
28 *People of the State of Cal.*, 220 F.3d 987, 999 (9th Cir. 2000).

1 In addition, a party seeking preliminary injunctive relief “must necessarily  
2 establish a relationship between the injury claimed in the party’s motion and the conduct  
3 asserted in the complaint.” *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994)  
4 (Eighth Amendment claim cannot provide basis for preliminary injunction against alleged  
5 acts in retaliation for filing claim); *see also Kaimowitz v. Orlando*, 122 F.3d 41, 43 (11th  
6 Cir. 1997).

7 **B. Discussion**

8 In his Motion, Plaintiff asserts that he was informed that as of October 30, 2013,  
9 he was terminated from his job based on an allegation that glue was found in his living  
10 quarters during a routine shakedown in his unit. (Doc. 73 at 2-3.) He asserts that he has  
11 not been given charges or a hearing. (*Id.* at 3.) He claims that ADC officials took  
12 adverse action against him to deter him from continuing the present litigation. (*Id.*) He  
13 also claims that because he will lose income due to the loss of his job, he will be harmed  
14 because he requires funds to pursue this litigation. (*Id.* at 7.) Plaintiff asks the Court to  
15 enjoin Defendants from participating in unwarranted harassment and other illegal actions.  
16 (*Id.* at 1.)

17 The Court will deny Plaintiff’s request for preliminary relief. Obviously, it is  
18 completely unrelated to the relief sought in the FAC, which concerns religious exercise  
19 rights to a religious diet. Moreover, Plaintiff has not tied any alleged retaliation to the  
20 Defendants in the present case. And he fails to demonstrate irreparable harm.

21 Plaintiff can file a separate lawsuit raising a retaliation claim. A retaliation claim  
22 has five basic elements: (1) an assertion that a state actor took some adverse action  
23 against an inmate (2) because of (3) that prisoner’s protected conduct and that such action  
24 (4) chilled the inmate’s exercise of his First Amendment rights (or that the inmate  
25 suffered more than minimal harm) and (5) the action did not reasonably advance a  
26 legitimate correctional goal. *Rhodes v. Robinson*, 408 F.3d 559, 567-58 (9th Cir. 2005).  
27 The Court notes that Plaintiff’s allegations do not tie the action taken to a retaliatory  
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1 motive except based on the timing of this Court's denial of summary judgment in the  
2 present case.

3 **IT IS ORDERED that** the reference to the Magistrate Judge is withdrawn as to  
4 Plaintiff's Motion for Prospective Relief and Temporary Restraining Order (Doc. 73) and  
5 the Motion is **denied**.

6 DATED this 12th day of December, 2013.

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Robert C. Broomfield  
Senior United States District Judge