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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTONIO MALDONADO,

CASE NO. 1:10-cv-01170-MJS (PC)

Plaintiff,

ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER

v.

(ECF No. 11)

NEIL H. ADLER, et al.,

Defendants.

_____ /

ORDER

I. PROCEDURAL HISTORY

Plaintiff Antonio Maldonado is a federal prisoner proceeding pro se and in forma pauperis in this civil action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Plaintiff filed his initial Complaint on July 1, 2010. (ECF No. 1). Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 7). Plaintiff's First Amended Complaint, filed August 20, 2010, was dismissed with leave to amend for failure to state any claims upon which relief may be granted. (ECF Nos. 9, 12). Pending before the Court is Plaintiff's Motion for a Temporary Restraining Order.

1 (ECF No. 11).

2 **II. ARGUMENT**

3 Plaintiff is asking the Court to order medical staff at Taft Correctional Institution to
4 perform surgery on Plaintiff's hernia. Plaintiff alleges that his pain increases as the hernia
5 grows larger in size. He has submitted multiple requests for surgery, but believes that
6 surgery is being denied because his release date is approaching. Plaintiff argues that the
7 medical staff is disregarding prison policy in not treating his condition.
8

9 **III. LEGAL STANDARDS**

10 A temporary restraining order (TRO) may be granted without written or oral notice
11 to the adverse party or that party's attorney only if: (1) it clearly appears from specific facts
12 shown by affidavit or by the verified complaint that immediate and irreparable injury, loss
13 or damage will result to the applicant before the adverse party or the party's attorney can
14 be heard in opposition, and (2) the applicant's attorney certifies in writing the efforts, if any,
15 which have been made to give notice and the reasons supporting the claim that notice
16 should not be required. See Fed.R.Civ.P. 65(b).
17

18 The standards for a TRO are essentially the same as that for a preliminary
19 injunction. To be entitled to preliminary injunctive relief, a party must demonstrate "that he
20 is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence
21 of preliminary relief, that the balance of equities tips in his favor, and that an injunction is
22 in the public interest." Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009)
23 (citing Winter v. Natural Res. Def. Council, Inc., 129 S.Ct. 365, 374 (2008)). The Ninth
24 Circuit has also held that the "sliding scale" approach it applies to preliminary injunctions
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1 as it relates to the showing a plaintiff must make regarding his chances of success on the
2 merits survives Winter and continues to be valid. Alliance for Wild Rockies v. Cottrell, 622
3 F.3d 1045, 1052-53 (9th Cir. 2010). Under this sliding scale, the elements of the
4 preliminary injunction test are balanced.

5
6 As it relates to the merits analysis, a stronger showing of irreparable harm to plaintiff might
7 offset a lesser showing of likelihood of success on the merits. Id.

8 In cases brought by prisoners involving conditions of confinement, any preliminary
9 injunction “must be narrowly drawn, extend no further than necessary to correct the harm
10 the court finds requires preliminary relief, and be the least intrusive means necessary to
11 correct the harm.” 18 U.S.C. § 3626(a)(2).

12
13 Federal courts are courts of limited jurisdiction, and as a preliminary matter, the
14 court must have before it an actual case or controversy. City of Los Angeles v. Lyons, 461
15 U.S. 95, 102 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church
16 and State, Inc., 454 U.S. 464, 471 (1982); Jones v. City of Los Angeles, 444 F.3d 1118,
17 1126 (9th Cir. 2006). If the court does not have an actual case or controversy before it, it
18 has no power to hear the matter in question. Id. “A federal court may issue an injunction
19 if it has personal jurisdiction over the parties and subject matter jurisdiction over the claim;
20 it may not attempt to determine the rights of persons not before the court.” Zepeda v.
21 United States Immigration Service, 753 F.2d 719, 727 (9th Cir. 1985).

22 **IV. ANALYSIS**

23
24 The Court may not address the merits of Plaintiff’s motion because the Court does
25 not have jurisdiction over the matter. Plaintiff’s First Amended Complaint was the operative
26 pleading and was dismissed, with leave to amend, for failure to state any claims upon
27

1 which relief may be granted. Thus, at this point in time, there is no case or controversy
2 before the court, and the court has no jurisdiction to issue any preliminary injunctions. See
3 Velasquez v. Allison, 2009 WL 776994, *1 (E.D. Cal. Mar. 23, 2009). Until and unless the
4 Court finds that plaintiff has stated cognizable claims for relief under section 1983 and the
5 defendants against whom the claims are stated have been served and made an
6 appearance in this action, the Court will not have jurisdiction to issue any orders awarding
7 the relief plaintiff seeks. Calderon v. Woodford, 2009 WL 3381038, *1 (E.D. Cal. Oct. 19,
8 2009).

9
10 Furthermore, as Plaintiff's complaint was dismissed for failure to state upon which
11 relief can be granted, Plaintiff has not shown a probability of likelihood of success on the
12 merits.
13

14 The criteria for injunctive relief have not been met, and Plaintiff's Motion for a
15 Temporary Restraining Order, filed October 14, 2010, must be denied.

16 **V. CONCLUSION**

17 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for a Temporary
18 Restraining Order is DENIED.
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21 IT IS SO ORDERED.

22 Dated: June 7, 2011
23 ci4d6

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE