

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GORDON DALE MEADOR,
Plaintiff,
v.
K. AYE, et al.,
Defendants.

1:14-cv-00006-DAD-EPG (PC)
FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF’S
MOTION FOR A PRELIMINARY
INJUNCTION BE DENIED
(ECF NO. 116)
OBJECTIONS, IF ANY, DUE WITHIN
TWENTY-ONE DAYS

Gordon Meador (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. On February 24, 2017, Plaintiff filed an “Application for Preliminary Injunction to Prevent the Infliction of Pain and Suffering FRCP 65(a) Declaration” (“the Motion”). (ECF No. 116).

According to the Motion, Plaintiff has been on morphine since February 13th, 2013. A 602 medical appeal directed that Plaintiff was to be provided morphine every 60 days. However, Dr. C. Wu (who was assigned in January of 2017 to the unit that Plaintiff is in) violated the 602 medical appeal by renewing Plaintiff’s morphine for only 10 days. Accordingly, on February 12th, 2017, Plaintiff lodged a 602 against Dr. C. Wu. On February 15th, 2017, Plaintiff personally sent Dr. C. Wu a notice of the violation. On February 18th, 2017, Dr. C. Wu “remove[d] the plaintiff from morphine all together.” Dr. C. Wu did this without ever examining Plaintiff. Removing Plaintiff from morphine violates the Chief Medical Executive’s order to provide Plaintiff with morphine every sixty days. Plaintiff states that he will not be able to function without the morphine. Plaintiff also appears to be alleging some sort of retaliation in relation to

1 his prosecution of this case, but he provides no facts related to this issue. Plaintiff asks for an
2 evidentiary hearing on these issues, and for a preliminary injunction directing that Plaintiff be
3 placed back on morphine pending the outcome of the evidentiary hearing.

4 A federal district court may issue emergency injunctive relief only if it has personal
5 jurisdiction over the parties and subject matter jurisdiction over the lawsuit. See Murphy Bros.,
6 Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999) (noting that one “becomes a party
7 officially, and is required to take action in that capacity, only upon service of summons or other
8 authority-asserting measure stating the time within which the party served must appear to
9 defend.”). The court may not attempt to determine the rights of persons not before it. See, e.g.,
10 Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229, 234-35 (1916); Zepeda v. INS, 753 F.2d
11 719, 727-28 (9th Cir. 1983); see also Califano v. Yamasaki, 442 U.S. 682, 702 (1979) (injunctive
12 relief must be “narrowly tailored to give only the relief to which plaintiffs are entitled”). Under
13 Federal Rule of Civil Procedure 65(d)(2), an injunction binds only “the parties to the action,”
14 their “officers, agents, servants, employees, and attorneys,” and “other persons who are in active
15 concert or participation.” Fed. R. Civ. P. 65(d)(2)(A)-(C).

16 On the merits, “[a] plaintiff seeking a preliminary injunction must establish that he is
17 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
18 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the
19 public interest.” Glossip v. Gross, 135 S. Ct. 2726, 2736-37 (2015) (quoting Winter v. Natural
20 Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)). “Under *Winter*, plaintiffs must establish that
21 irreparable harm is likely, not just possible, in order to obtain a preliminary injunction.” Alliance
22 for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011).

23 While the Court is sympathetic to Plaintiff’s plight, the Court will recommend that the
24 Motion be denied. Dr. C. Wu is not a defendant in this case. Accordingly, the Court does not
25 currently have jurisdiction to order Dr. C. Wu (the doctor who is now apparently in charge of
26 Plaintiff’s care) to prescribe Plaintiff morphine.

27 Additionally, Plaintiff himself cited to Federal Rule of Civil Procedure 65(a). Federal
28 Rule of Civil Procedure 65(a)(1) clearly states that “[t]he court may issue a preliminary injunction

1 only on notice to the adverse party.”¹ Despite this, there is no indication that Plaintiff served Dr.
2 C. Wu with a copy of the Motion.

3 Finally, the Court notes that it does not appear that Plaintiff tried to resolve this issue
4 through the prison appeals process before filing the Motion. According to Plaintiff, the Chief
5 Medical Executive has directed that Plaintiff is to be provided with morphine. However, it
6 appears that instead of filing an appeal of Dr. C Wu’s action of removing Plaintiff from
7 morphine, which allegedly violates the Chief Medical Executive’s directive, Plaintiff filed the
8 Motion (the Motion is dated February 18th, 2017, which is the same day Dr. C. Wu allegedly
9 informed Plaintiff that Plaintiff was no longer going to receive morphine).

10 Accordingly, based on the foregoing, **IT IS HEREBY RECOMMENDED** that the
11 Motion be DENIED.

12 These Findings and Recommendations will be submitted to the United States District
13 Court Judge assigned to this action pursuant to the provisions of 28 U.S.C. § 636 (b)(1). Within
14 **twenty-one (21) days** after being served with a copy of these Findings and Recommendations,
15 any party may file written objections with the court and serve a copy on all parties. Such a
16 document should be captioned “Objections to Magistrate Judge’s Findings and
17 Recommendations.” Any reply to the objections shall be served and filed within **ten (10) days**
18 after service of the objections. The parties are advised that failure to file objections within the
19 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,
20 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

21
22 IT IS SO ORDERED.

23 Dated: February 27, 2017

24 /s/ Eric P. Gray
25 UNITED STATES MAGISTRATE JUDGE

26 _____
27 ¹The Court notes that at one point Plaintiff asks for a temporary restraining order, as opposed
28 to a preliminary injunction. However, in that same sentence Plaintiff cites to Federal Rule of Civil Procedure 65(a),
which deals with preliminary injunctions. Additionally, in every other instance Plaintiff asks for a preliminary
injunction, not a temporary restraining order. Accordingly, the Court treats the Motion as a request for a preliminary
injunction.