

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ADRIAN MOON,

Plaintiff,

V.

HOLLAND, et al.,

Defendants

Case No. 1:14-cv-01704-LJO-JLT (PC)

**FINDINGS AND RECOMMENDATIONS TO
DISMISS THE ACTION FOR PLAINTIFF'S
FAILURE TO OBEY COURT ORDER and TO
DENY PLAINTIFF'S REQUESTS FOR
TEMPORARY RESTRAINING ORDERS AND
SANCTIONS FOR LACK OF JURISDICTION**

(Docs. 7, 10, 14, 15, 16, 17, 18)

Plaintiff, Adrian Moon, is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint in this action on October 31, 2014. On that same date, Plaintiff filed an application to proceed *in forma pauperis*. (Doc. 2.) The Court denied Plaintiff's application to proceed *in forma pauperis* and ordered him to pay the \$400.00 filing fee in full within thirty days. (Docs. 7, 10.)

Though Plaintiff objected, the Court overruled the objections and considered, even, whether reconsideration should be granted; however, this too was denied. (Docs. 11, 13.) More than thirty days have passed from the order directing Plaintiff to pay the filing fee in full and he has failed to do so; rather, Plaintiff filed four motions for temporary restraining orders (*see* Docs. 14, 15, 16, 18) and one for sanctions which seeks similar result and calculates monetary damages until achieved which is properly construed as a motion for temporary restraining order (*see* Doc.

1 17).

2 A civil action may not proceed absent the submission of either the filing fee or a
3 completed application to proceed *in forma pauperis*. 28 U.S.C. §§ 1914, 1915. Though Plaintiff
4 submitted a completed application to proceed *in forma pauperis*, it was denied because Plaintiff
5 had more than three strikes against him and did not meet the imminent danger of serious physical
6 exception per 28 U.S.C. § 1915(g) at the time this action was filed. Based on Plaintiff's
7 ineligibility to proceed *in forma pauperis* and his failure to comply with the Court's order to pay
8 the filing fee in full, dismissal of this action is appropriate. *In re Phenylpropanolamine (PPA)*
9 *Products Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006); Local Rule 110.

10 The analysis regarding Plaintiff's requests for temporary restraining orders is substantially
11 identical to that for a preliminary injunction, *Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush*
12 *and Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001), and a "preliminary injunction is an
13 extraordinary remedy never awarded as of right." *Winter v. Natural Resources Defense Council,*
14 *Inc.*, 555 U.S. 7, 24, 129 S.Ct. 365, 376 (2008) (citation omitted). "A plaintiff seeking a
15 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to
16 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
17 favor, and that an injunction is in the public interest." *Id.* at 374 (citations omitted). An
18 injunction may only be awarded upon a *clear showing* that the plaintiff is entitled to relief. *Id.* at
19 376 (citation omitted) (emphasis added).

20 Federal courts are courts of limited jurisdiction and in considering a request for
21 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary matter, it
22 have before it an actual case or controversy. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 103
23 S.Ct. 1660, 1665 (1983); *Valley Forge Christian Coll. v. Ams. United for Separation of Church*
24 *and State, Inc.*, 454 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982). If the Court does not have an
25 actual case or controversy before it, it has no power to hear the matter in question. *Id.* Plaintiff's
26 Complaint has not been screened due to his failure to pay the filing fee. Thus, there is no
27 verification whether Plaintiff is able to state any claim upon which relief may be granted. Thus,
28 this Court will not consider Plaintiff's requests for temporary restraining orders.

1 It is noted that in Plaintiff's "Ex Parte Application Emergency Motion Temporary
2 Restraining Order Pursuant to Fed. R. Civ. P. 65(b)" he once again comments on possibly and
3 raises the suggestion that he might have basis to file a criminal/judicial misconduct complaint
4 against District Judge Lawrence O'Neill, the undersigned, and Magistrate Judges Dennis L. Beck,
5 Gary S. Austin, and Michael J. Seng. (See Doc. 16, 3:11-19.) As stated in the order adopting the
6 findings and recommendation to deny Plaintiff's application to proceed *in forma pauperis*, the
7 judges he names are " . . . absolutely immune from liability for acts 'done by them in the exercise
8 of their judicial functions.'" *Miller v. Davis*, 521 F.3d 1142, 1145 (9th Cir. 2008) quoting *Bradley*
9 *v. Fisher*, 80 U.S. 335, 347 (1871). Further, Plaintiff's comments that these judges are directing
10 Warden Holland to direct prison staff to act adversely to Plaintiff's interests are fanciful and
11 simply not facially plausible under *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), nor do they
12 suffice as a basis for recusal under 28 U.S.C. §455(a), *see also Miles v. Ryan*, 697 F.3d 1090 (9th
13 Cir. 2012) quoting *United States v. Holland*, 519 F.3d 909, 913 (9th Cir.2008) (The standard for
14 recusal is ". . . whether a reasonable person with knowledge of all the facts would conclude that
15 the judge's impartiality might reasonably be questioned The 'reasonable person' is not
16 someone who is hypersensitive or unduly suspicious, but rather is a well-informed, thoughtful
17 observer. The standard must not be so broadly construed that it becomes, in effect, presumptive,
18 so that recusal is mandated upon the merest unsubstantiated suggestion of personal bias or
19 prejudice.").

20 Accordingly, it is HEREBY RECOMMENDED that:

- 21 1. This action be DISMISSED without prejudice for Plaintiff's failure to pay the
22 \$400.00 filing fee in full;
- 23 2. That Plaintiff's motions for temporary restraining orders (Docs. 14, 15, 16, 17, 18)
24 be DISREGARDED; and
- 25 3. That Plaintiff's motion for contempt/sanctions (Doc. 17) be DENIED.

26 These Findings and Recommendations will be submitted to the United States District
27 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **30**
28 **days** after being served with these Findings and Recommendations, Plaintiff may file written

1 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
2 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
3 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, __ F.3d __, __,
4 No. 11-17911, 2014 WL 6435497, at *3 (9th Cir. Nov. 18, 2014) (citing *Baxter v. Sullivan*, 923
5 F.2d 1391, 1394 (9th Cir. 1991)).

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7 IT IS SO ORDERED.

8 Dated: January 14, 2015

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11 /s/ **Jennifer L. Thurston**
12 UNITED STATES MAGISTRATE JUDGE

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