

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  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JARED M. VILLERY,  
  
                                Plaintiff,  
  
                v.  
  
CALIFORNIA DEPARTMENT OF  
CORRECTIONS, ET AL.,  
  
                                Defendants.

No. 1:15-CV-00987-DAD-BAM

ORDER DENYING MOTION FOR  
TEMPORARY RESTRAINING ORDER

(Doc. Nos. 14, 15)

Plaintiff Jared M. Villery is a state prisoner proceeding pro se with this civil rights action pursuant to 42 U.S.C. § 1983. On June 29, 2015, plaintiff filed the complaint commencing this action. (Doc. No. 1.) The then assigned magistrate judge screened plaintiff’s complaint pursuant to 28 U.S.C. § 1915A and issued an order on July 8, 2015, dismissing the complaint with leave to amend for failure to state a cognizable claim. (Doc. No. 7.) On July 30, 2015, plaintiff filed a motion for reconsideration of the screening order. (Doc. No. 10.) The previously assigned district judge granted that motion, concluding that plaintiff had stated cognizable claims for violations of the Eighth Amendment, the Americans with Disability Act (ADA) and the Rehabilitation Act (RA), all related to plaintiff’s allegation that he was improperly denied single cell status. (Doc. No. 12.) On December 15, 2015, plaintiff filed a motion for temporary restraining order seeking single cell status. (Doc. No. 15.) On December 30, 2015, plaintiff filed a declaration in support of his motion. (Doc. No. 16.) For the reasons set forth below, plaintiff’s

1 motion for a temporary restraining order is denied.

2 I. BACKGROUND

3 In his complaint, plaintiff alleges as follows. On August 3, 2007, two inmates attacked  
4 plaintiff with a knife, stabbed him once in the back, and repeatedly punched and kicked him in the  
5 head and upper torso. (Doc. No. 1, 7:18-23.) After this alleged attempt on his life, plaintiff was  
6 diagnosed as suffering from PTSD. (*Id.* at 7:24.) Due to his PTSD symptoms, plaintiff was then  
7 housed alone in cell for over seven months for his own safety and the safety of other inmates. (*Id.*  
8 at 7:25-27.) However, according to plaintiff after his removal from single cell status, over the last  
9 eight years, there have been “countless instances of near violence due to [plaintiff’s] reactions to  
10 his cellmates.” (*Id.* at 8:20-21.) According to plaintiff:

11 In the preceding 18 months, [plaintiff] has had fourteen different  
12 cellmates, seven of whom have been in the last five months, and his  
13 condition has led to near altercations with all of them due to his  
14 reactions caused by his PTSD. Now, due to an upcoming reduction  
in security level, [plaintiff] faces transfer to a dormitory setting,  
where he will be forced to live with seven other inmates.

15 (*Id.* at 16:19-23.) Plaintiff claims that he has been denied single cell status “because custody staff  
16 had said that they couldn’t due to overcrowding” and an email sent to all mental health staff  
17 instructed the mental health staff to refrain from making any housing recommendations due to  
18 overcrowding. (*Id.* at 15:24-27, 11:19-23.) Plaintiff also claims that:

19 Because the failure to house [plaintiff] alone is impeding the  
20 treatment of his PTSD, and leading to the worsening of his  
21 symptoms and decompensation, continuing to force [plaintiff] to  
22 live with other inmates places both him and other inmates at  
23 imminent risk of irreparable injury, as an altercation triggered by  
[plaintiff’s] self-defensive response to a perceived threat has the  
potential to result in serious injury or even death to himself and  
other inmates.

24 (*Id.* at 17:18-24.)

25 In support of his current motion for a temporary restraining order, plaintiff has filed two  
26 declarations in which he makes similar allegations to those summarized above. (Doc. Nos. 14,  
27 16.) Specifically, he alleges therein as follows. He suffers from PTSD and that living with other  
28 inmates has led to a deterioration of his condition, causing him to react more and more frequently

1 and violently to what looks like a threat to him. (Doc. No. 16 at 2:13-20.) On December 1, 2015,  
2 plaintiff was involved in a physical altercation with his cellmate. (Doc. No. 14 at 3:15-18.)  
3 Then, at a classification hearing on December 9, 2015, defendant Fisher denied plaintiff  
4 single-cell housing and cleared him to be housed in a dormitory. (Doc. No. 14 at 3:9-14.) On  
5 December 15, 2015, plaintiff was involved in another violent in-cell fight with an inmate, which  
6 resulted in fractures to the tarsus bones in his right ankle, the ends of his right tibia and fibula, and  
7 a spiral fracture to his right fibula. (Doc. No. 16 at 2:26-3:1.) He underwent surgery the next day  
8 during which a metal plate and two screws were inserted to stabilize his right ankle. (*Id.* at  
9 3:3-5.) Since his discharge, plaintiff has remained in a cell by himself in the infirmary at CSATF.  
10 (*Id.* at 3:3-5.) Plaintiff claims though that “once I’m discharged I’ll once again be forced to live  
11 with another inmate in my cell, or worse, I’ll be sent to dormitory housing in living quarters with  
12 seven other inmates.” (*Id.* at 4:15-18.)

## 13 II. LEGAL STANDARD

14 “[I]njunctive relief [is] an extraordinary remedy that may only be awarded upon a clear  
15 showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555  
16 U.S. 7, 22 (2008). The legal principles applicable to requests for injunctive relief, such as a  
17 temporary restraining order or preliminary injunction, are well established. “The proper legal  
18 standard for preliminary injunctive relief requires a party to demonstrate ‘that he is likely to  
19 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
20 relief, that the balance of equities tips in his favor, and that an injunction is in the public  
21 interest.’” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter*, 555  
22 U.S. at 20); *see also Center for Food Safety v. Vilsack*, 636 F.3d 1166, 1172 (9th Cir. 2011)  
23 (“After *Winter*, ‘plaintiffs must establish that irreparable harm is likely, not just possible, in order  
24 to obtain a preliminary injunction.’); *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d  
25 1046, 1052 (9th Cir. 2009). The Ninth Circuit has also held that “[a] preliminary injunction is  
26 appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were  
27 raised and the balance of hardships tips sharply in the plaintiff’s favor.” *Alliance for Wild  
28 Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (quoting *Lands Council v. McNair*,

1 537 F.3d 981, 97 (9th Cir. 2008) (en banc)).<sup>1</sup>

2 The Local Rules of this court impose additional requirements on parties moving for a  
3 temporary restraining order. First, the court will consider whether the moving party could have  
4 sought relief by a noticed motion for a preliminary injunctive at an earlier date without the  
5 necessity of seeking last-minute relief by motion for a temporary restraining order. *See* Local  
6 Rule 65-231(b). Second, the moving party must provide specific documents to the court in  
7 support of the requested temporary restraining order. *See* Local Rule 65-231(c).

8 Finally, in cases brought by prisoners involving conditions of their confinement, any  
9 temporary restraining order or preliminary injunction must be narrowly drawn, extend no further  
10 than necessary to correct the harm the court finds requires preliminary relief, and be the least  
11 intrusive means necessary to correct the harm in question. *See* 18 U.S.C. § 3626(a)(2).

### 12 III. ANALYSIS

13 Here, plaintiff asks the court to enter a temporary restraining order requiring defendants to  
14 house him in a single occupancy cell until all defendants in this matter have been served, briefing  
15 is held on plaintiff's request for a preliminary injunction, and the merits of the need for a  
16 preliminary injunction are resolved. As plaintiff argues, "it is unclear when service will be  
17 ordered on defendants, how long it will take for defendants to respond once served. This process  
18 could easily take well over six months." (Doc. No. 15, 9:23-26.) Thus, plaintiff's motion for a  
19 temporary restraining order seeks injunctive relief for more than ten days in duration, and thus is  
20 best characterized as a motion for preliminary injunction. *See* Fed. R. Civ. P. 65(b)(2) (temporary  
21 restraining orders are generally allowed for no more than 10 days); *see also Voth v. Mills*, Civil  
22 No. 09-423-HA, 2009 WL 1159596, at \*1 (D. Or. April 27, 2009). Pursuant to Federal Rule of  
23 Civil Procedure 65(a), "[n]o preliminary injunction shall be issued without notice to the adverse  
24 party." The court has previously ruled in this case that:

---

25 <sup>1</sup> The Ninth Circuit has found that this "serious question" version of the circuit's sliding scale  
26 approach survives "when applied as part of the four-element *Winter* test." *Alliance for Wild*  
27 *Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011). "That is, 'serious questions going to the  
28 merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a  
preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable  
injury and that the injunction is in the public interest." *Id.* at 1135.

1 a motion for preliminary injunction cannot be decided until the  
2 parties to the action are served. *See Zepeda v. INS*, 753 F.2d 719,  
3 727 (9th Cir. 1983). Accordingly, the court will not rule on  
Villery's motion for a preliminary injunction until defendants have  
responded to the motion. . . .

4 (Doc. No. 12, 8:20-23.) Plaintiff's present motion for a temporary restraining order is essentially  
5 an attempt to avoid the consequences of that prior ruling and may properly be denied on that basis  
6 alone.

7 In any event, plaintiff has made no showing in the present of motion of the likelihood of  
8 irreparable harm since he is currently assigned to a single cell, by himself, in the infirmary at  
9 CSATF. Plaintiff does allege that "once I'm discharged I'll once again be forced to live with  
10 another inmate in my cell, or worse, I'll be sent to dormitory housing in living quarters with seven  
11 other inmates." (Doc. No. 16 at 4:15-18.) However, plaintiff does not allege that prison officials  
12 have informed him that he will be discharged from the infirmary imminently. Furthermore,  
13 where plaintiff will be housed after he is discharged is entirely speculative at this point.

14 Speculative injury does not constitute irreparable harm. *See Caribbean Marine Servs. Co. v.*  
15 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988); *Goldie's Bookstore, Inc. v. Superior Court*, 739 F.2d  
16 466, 472 (9th Cir. 1984). Rather, a presently existing actual threat must be shown, although the  
17 injury need not be certain to occur. *See Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S.  
18 100, 130-31 (1969); *FDIC v. Garner*, 125 F.3d 1272, 1279-80 (9th Cir. 1997); *Caribbean*  
19 *Marine Servs. Co.*, 844 F.2d at 674. Since plaintiff's claim that he will be housed in double cell  
20 or in a dormitory after he is discharged from the infirmary is speculative, plaintiff has not  
21 demonstrated that he is likely to suffer irreparable harm if injunctive relief is not granted. *See*  
22 *O'Keefe v. Cate*, No. 2:11-cv-2659 KJN P, 2012 WL 1555055, at \*1-2 (E.D. Cal. May 1, 2012).

23 ////  
24 ////  
25 ////  
26 ////  
27 ////  
28 ////


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

IV. CONCLUSION

For all of the reasons set forth above, plaintiff's motion for a temporary restraining order (Doc. No. 15) is denied.

IT IS SO ORDERED.

Dated: January 5, 2016

---

DALE A. DROZD  
UNITED STATES DISTRICT JUDGE