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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIAN C. APPLGATE,

Plaintiff

v.

WINFRED KOKOR,

Defendant.

CASE NO. 1:15-cv-01054-MJS (PC)

**ORDER DENYING PLAINTIFF'S
MOTIONS FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

(ECF NOS. 10-11)

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. The matter proceeds on Plaintiff's Eighth Amendment deliberate indifference claim and First Amendment retaliation claim against Defendant Dr. Winfred Kokor. (ECF Nos. 8, 9.) Plaintiff has consented to the undersigned's jurisdiction. (ECF No. 5.) Pending before the Court are motions for a temporary restraining order and preliminary injunction.¹ (ECF Nos. 10-11.)

I. LEGAL STANDARDS

The legal principles applicable to requests for injunctive relief, such as a temporary restraining order or preliminary injunction, are well established. To prevail, the moving party must show either a likelihood of success on the merits of the underlying controversy

¹ These motions appear to be duplicative of each other.

1 and the possibility of irreparable injury, or that serious questions are raised and the
2 balance of hardships tips sharply in the movant's favor. See Coalition for Economic
3 Equity v. Wilson, 122 F.3d 692, 700 (9th Cir. 1997); Oakland Tribune, Inc. v. Chronicle
4 Publ'g Co., 762 F.2d 1374, 1376 (9th Cir. 1985). The two formulations represent two
5 points on a sliding scale with the focal point being the degree of irreparable injury shown.
6 See Oakland Tribune, 762 F.2d at 1376. Under any formulation of the test, however, the
7 moving party must demonstrate that there exists a significant threat of irreparable injury.
8 See id. In the absence of a significant showing of possible irreparable harm, the court
9 need not reach the issue of likelihood of success on the merits. See id. The loss of
10 money, or an injury whose measure of damages can be calculated in terms of money, will
11 not be considered irreparable. See id. at 1334-35.

12 The standard for a temporary restraining order is essentially the same. The
13 purpose in issuing a temporary restraining order is to preserve the status quo pending a
14 more complete hearing. The cases contain limited discussion of the standards for issuing
15 a temporary restraining order due to the fact that very few such orders can be appealed
16 prior to a full hearing. It is apparent however, that requests for temporary restraining
17 orders are governed by the same general standards that govern the issuance of a
18 preliminary injunction. See New Motor Vehicle Bd. v. Orrin W. Fox Co., 434 U.S. 1345,
19 1347 n.2 (1977); Los Angeles Unified Sch. Dist. v. United States Dist. Court, 650 F.2d
20 1004, 1008 (9th Cir. 1981) (Ferguson, J. dissenting); Century Time Ltd. v. Interchron Ltd.,
21 729 F. Supp. 366, 368 (S.D.N.Y. 1990). In many cases the emphasis of the court is
22 directed to irreparable harm and the balance of hardships because the merits of a
23 controversy are often difficult to ascertain and adjudicate on short notice.

24 **II. DISCUSSION**

25 **1. Allegations in the Complaint**

26 The actions that give rise to Plaintiff's complaint occurred while he was housed at
27 California Substance Abuse Treatment Facility (CSATF) in Corcoran, California. He is
28 currently incarcerated at California Correctional Institution (CCI) in Tehachapi, California
The essence of Plaintiff's claim is that, in light of his longstanding health problems, he

1 has held multiple accommodation chronos since 2007, including lower bunk, lower tier,
2 orthotic shoe, an ankle brace chronos, as well as “ADA status,” which entitles him to use
3 a handicapped shower and not climb stairs. In January 2014, these chronos were
4 renewed for one year. Upon his transfer to CSATF, Dr. Kokor rescinded Plaintiff’s lower
5 tier chrono and his ADA status with deliberate indifference to Plaintiff’s health and in
6 retaliation for Plaintiff’s assertion that he has sued in the past and will sue in the future if
7 he receives inadequate medical care. Plaintiff suffered injury as a result of Dr. Kokor’s
8 conduct.

9 **2. Motion for Temporary Restraining Order and Preliminary Injunction**

10 In his motion for a temporary restraining order and preliminary injunction, Plaintiff
11 requests an order to force officials at CCI to schedule an appointment with a podiatrist
12 and a neurologist to determine his immediate need for certain treatment, care, and
13 accommodations. Plaintiff claims that, absent these specialty evaluations, his condition
14 will continue to go untreated, and he may suffer further injury.

15 **3. Analysis**

16 Plaintiff’s request for injunctive relief must be denied.

17 Plaintiff bases the instant motion on a claim that staff members at CCI are refusing
18 to schedule Plaintiff for specialty evaluations. Such a claim is unrelated to the claims
19 asserted in the complaint – namely, that Dr. Kokor improperly revoked Plaintiff’s chronos
20 and ADA status. It is appropriate to grant a preliminary injunction “intermediate relief of
21 the same character as that which may be granted finally.” De Beers Consol. Mines v.
22 U.S., 325 U.S. 212, 220 (1945). A court should not issue an injunction when the relief
23 sought is not of the same character and the injunction deals with a matter lying wholly
24 outside the issues in the underlying action. Id.

25 Also, absent a substantial relationship, not present here, a court may not enter an
26 injunction against persons who are not parties to the case before it, See Zepeda v. U.S.
27 INS, 753 F.2d 719, 727 (9th Cir. 1984). The officials Plaintiff wants to have subjected to
28 the Court’s injunctive powers are not parties to this action.

Lastly, Plaintiff’s claim that his condition may deteriorate if untreated is

1 speculative. It does not reach the level of pleading irreparable harm necessary for the
2 issuance of injunctive relief. See Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668,
3 674 (9th Cir. 1988); Goldie's Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472 (9th
4 Cir. 1984).

5 **III. CONCLUSION**

6 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's motions for
7 temporary restraining order and preliminary injunction (ECF Nos. 10-11) are DENIED.

8 IT IS SO ORDERED.

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10 Dated: November 10, 2015

11 /s/ Michael J. Seng
12 UNITED STATES MAGISTRATE JUDGE
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