



1 Recommendations on January 19, 2017, recommending service on PA Johnson and  
2 the dismissal of all other claims and Defendants. (ECF No. 19.) These Findings and  
3 Recommendations remain pending.

4 Before the Court now is Plaintiff's January 23, 2017, motion for temporary  
5 restraining order seeking to prevent his transfer to another institution in retaliation for the  
6 filing of this action.

### 7 **I. Plaintiff's Allegations**

8 In the SAC, Plaintiff alleges that he suffers from Raynaud's Disease. In 2010,  
9 before his arrival at Valley State Prison ("VSP") in Chowchilla, California, Plaintiff  
10 received permanent chronos from medical specialists for single-cell accommodations  
11 and "No exposure to cold, drafts of air, or fans."

12 On October 24, 2014, VSP PA Johnson rescinded Plaintiff's single-cell chrono, an  
13 act that was beyond this Defendant's authority. Also on that date, PA Johnson  
14 designated Plaintiff "High-Risk Medical Status," a classification that would have caused  
15 Plaintiff to be transferred to Chino State Prison, an institution with an open housing plan  
16 that would have exacerbated Plaintiff's medical condition. On October 30, 2014, the  
17 transfer recommendation was denied.

### 18 **II. Legal Standards**

19 The purpose of a temporary restraining order is to preserve the status quo before  
20 a preliminary injunction hearing may be held; its provisional remedial nature is designed  
21 merely to prevent irreparable loss of rights prior to judgment. Sierra On-Line, Inc. v.  
22 Phoenix Software, Inc., 739 F.2d 1415, 1422 (9th Cir. 1984). Under Federal Rule of Civil  
23 Procedure 65, a temporary restraining order may be granted only if "specific facts in an  
24 affidavit or verified complaint clearly show that immediate and irreparable injury, loss, or  
25 damage will result to the movant before the adverse party can be heard in opposition."  
26 Fed. R. Civ. P. 65(b)(1)(A).

27 The standard for issuing a temporary restraining order is identical to the standard  
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1 for a preliminary injunction. See Stuhlberg Int'l Sales Co., Inc. v. John D. Brush & Co.,  
2 Inc., 240 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is an extraordinary  
3 and drastic remedy, never awarded as of right. Munaf v. Geren, 553 U.S. 674, 689-90  
4 (2008) (citations omitted). A plaintiff seeking a preliminary injunction must establish that  
5 he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the  
6 absence of preliminary relief, that the balance of equities tips in his favor, and that an  
7 injunction is in the public interest. Winter v. Natural Res. Def. Council, 555 U.S. 7, 20  
8 (2008). A preliminary injunction may issue where the plaintiff demonstrates the existence  
9 of serious questions going to the merits and the hardship balance tips sharply toward the  
10 plaintiff, assuming the other two elements of the Winter test are also met. Alliance for the  
11 Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-32 (9th Cir. 2011). Under either  
12 formulation of the principles, preliminary injunctive relief should be denied if the  
13 probability of success on the merits is low. See Johnson v. Cal. State Bd. of  
14 Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995) (even if the balance of hardships tips  
15 decidedly in favor of the moving party, it must be shown as an irreducible minimum that  
16 there is a fair chance of success on the merits).

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

### 21 **III. Analysis**

22 Plaintiff's complaint alleges that Defendant PA Johnson improperly rescinded a  
23 medical chrono in excess of her authority. In the pending motion for temporary  
24 restraining order, Plaintiff asserts new allegations, namely, that this Defendant  
25 manipulated Plaintiff's medical records by changing specific words and thereby making  
26 him subject to a potential transfer to another institution. Such a transfer would  
27 exacerbate Plaintiff's medical condition.  
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1 On review, the undersigned finds that Plaintiff has not demonstrated likelihood of  
2 success on the merits, likelihood of irreparable harm, a balance of equities in his favor,  
3 or that an injunction is in the public interest.

4 Moreover, the Court's jurisdiction is limited to the parties before it in this action  
5 and to Plaintiff's claim arising from PA Johnson's alleged improper revocation of a  
6 medical chrono. See e.g., Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 103-04  
7 (1998) ("[The] triad of injury in fact, causation, and redressability constitutes the core of  
8 Article III's case-or-controversy requirement, and the party invoking federal jurisdiction  
9 bears the burden of establishing its existence.") (citation omitted); American Civil  
10 Liberties Union of Nevada v. Masto, 670 F.3d 1046, 1061-62 (9th Cir. 2012) ("[F]ederal  
11 courts may adjudicate only actual, ongoing cases or controversies.") (citation and  
12 internal quotation marks omitted).

13 At this point, Defendant has not yet been served with the complaint, and the Court  
14 therefore does not have jurisdiction to order Defendant or any other individual to take  
15 any action. Even once this Defendant has been served, however, Plaintiff's request to  
16 prohibit a transfer is not the subject matter of this action, and Plaintiff would not be  
17 entitled to any such relief.

#### 18 **IV. Conclusion**

19 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's January 23, 2017,  
20 motion for temporary restraining order (ECF No. 20) be DENIED.

21 These findings and recommendations will be submitted to the United States  
22 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §  
23 636(b)(1). Within fourteen (14) days after being served with the findings and  
24 recommendations, the parties may file written objections with the Court. The document  
25 should be captioned "Objections to Magistrate Judge's Findings and Recommendation."  
26 A party may respond to another party's objections by filing a response within fourteen  
27 (14) days after being served with a copy of that party's objections. The parties are  
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1 advised that failure to file objections within the specified time may result in the waiver of  
2 rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter  
3 v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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IT IS SO ORDERED.

Dated: February 3, 2017

/s/ Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE