

1 seeking to prevent his transfer to another institution in retaliation for the filing of this action.

2 **I. Plaintiff's Allegations**

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

7 On October 24, 2014, VSP PA Johnson rescinded Plaintiff's single-cell chrono, an act that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

12 **II. Legal Standards**

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

20 The standard for issuing a temporary restraining order is identical to the standard for a
21 preliminary injunction. See Stuhlberg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc., 240 F.3d
22 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is an extraordinary and drastic remedy,
23 never awarded as of right. Munaf v. Geren, 553 U.S. 674, 689-90 (2008) (citations omitted). A
24 plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits,
25 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
26 equities tips in his favor, and that an injunction is in the public interest. Winter v. Natural Res.
27 Def. Council, 555 U.S. 7, 20 (2008). A preliminary injunction may issue where the plaintiff
28 demonstrates the existence of serious questions going to the merits and the hardship balance tips

1 sharply toward the plaintiff, assuming the other two elements of the Winter test are also met.
2 Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-32 (9th Cir. 2011). Under either
3 formulation of the principles, preliminary injunctive relief should be denied if the probability of
4 success on the merits is low. See Johnson v. Cal. State Bd. of Accountancy, 72 F.3d 1427, 1430
5 (9th Cir. 1995) (even if the balance of hardships tips decidedly in favor of the moving party, it
6 must be shown as an irreducible minimum that there is a fair chance of success on the merits).

7 In cases brought by prisoners involving conditions of confinement, any preliminary
8 injunction must be narrowly drawn, extend no further than necessary to correct the harm the court
9 finds requires preliminary relief, and be the least intrusive means necessary to correct the harm.
10 18 U.S.C. § 3626(a)(2).

11 **III. Analysis**

12 Plaintiff's complaint alleges that Defendant PA Johnson improperly rescinded a medical
13 chrono in excess of her authority. In the pending motion for temporary restraining order, Plaintiff
14 asserts new allegations, namely, that the defendant manipulated Plaintiff's medical records by
15 changing specific words that now render him subject to a potential transfer to another institution.
16 Such a transfer would exacerbate Plaintiff's medical condition.

17 On review, the undersigned finds that Plaintiff has not demonstrated likelihood of success
18 on the merits, likelihood of irreparable harm, a balance of equities in his favor, or that an
19 injunction is in the public interest.

20 Moreover, the Court's jurisdiction is limited to the parties before it in this action and to
21 Plaintiff's claim arising from PA Johnson's alleged improper revocation of a medical chrono. See
22 e.g., Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 103-04 (1998) ("[The] triad of injury in
23 fact, causation, and redressability constitutes the core of Article III's case-or-controversy
24 requirement, and the party invoking federal jurisdiction bears the burden of establishing its
25 existence.") (citation omitted); American Civil Liberties Union of Nevada v. Masto, 670 F.3d
26 1046, 1061-62 (9th Cir. 2012) ("[F]ederal courts may adjudicate only actual, ongoing cases or
27 controversies.") (citation and internal quotation marks omitted).

1 At this point, the defendant has not yet been served with the complaint, and the Court
2 therefore does not have jurisdiction to order the defendant or any other individual to take any
3 action. Even once defendant appears in this action, however, Plaintiff's request to prohibit a
4 transfer is not the subject matter of this action, and Plaintiff would not be entitled to any such
5 relief.

6 **IV. Conclusion**

7 Accordingly, the Court RECOMMENDS that Plaintiff's January 23, 2017, motion for
8 temporary restraining order (Doc. 20) be DENIED.

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

18
19 IT IS SO ORDERED.

20 Dated: June 8, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE