

1 **I. Legal Standards**

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

10 The standard for issuing a temporary restraining order is identical to the standard
11 for a preliminary injunction. See Stuhlberg Int'l Sales Co., Inc. v. John D. Brush & Co.,
12 Inc., 240 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is an extraordinary
13 and drastic remedy, never awarded as of right. Munaf v. Geren, 553 U.S. 674, 689-90
14 (2008) (citations omitted). A plaintiff seeking a preliminary injunction must establish that
15 he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
16 absence of preliminary relief, that the balance of equities tips in his favor, and that an
17 injunction is in the public interest. Winter v. Natural Res. Def. Council, 555 U.S. 7, 20
18 (2008). A preliminary injunction may issue where the plaintiff demonstrates the existence
19 of serious questions going to the merits and the hardship balance tips sharply toward the
20 plaintiff, assuming the other two elements of the Winter test are also met. Alliance for the
21 Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-32 (9th Cir. 2011). Under either
22 formulation of the principles, preliminary injunctive relief should be denied if the
23 probability of success on the merits is low. See Johnson v. Cal. State Bd. of
24 Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995) (even if the balance of hardships tips
25 decidedly in favor of the moving party, it must be shown as an irreducible minimum that
26 there is a fair chance of success on the merits).

27 In cases brought by prisoners involving conditions of confinement, any preliminary
28 injunction must be narrowly drawn, extend no further than necessary to correct the harm

1 the court finds requires preliminary relief, and be the least intrusive means necessary to
2 correct the harm. 18 U.S.C. § 3626(a)(2).

3 **II. Discussion**

4 On January 9, 2017, the Court screened Plaintiff's complaint and dismissed it with
5 leave to amend in light of Plaintiff's admission that he did not exhaust his administrative
6 remedies prior to filing suit. Plaintiff has recently been granted an extension of time to file
7 an amended pleading. Thus, at this stage of the proceedings, there is no operative
8 pleading. The Court therefore cannot opine that Plaintiff is likely to succeed on the merits
9 of his claims.

10 Furthermore, no Defendants have yet appeared in this action, and the Court does
11 not have jurisdiction to order injunctive relief which would require directing parties not
12 before the Court to take action. Zepeda v. United States Immigration & Naturalization
13 Serv., 753 F.2d 719, 727 (9th Cir. 1985) ("A federal court may issue an injunction if it has
14 personal jurisdiction over the parties and subject matter jurisdiction over the claim; it may
15 not attempt to determine the rights of persons not before the court.").

16 Plaintiff has also requested attorney's fees pursuant to 18 U.S.C. § 3006A. This
17 section, titled "Adequate Representation of Defendants," concerns the appointment of
18 attorneys for indigent defendants in criminal action and is inapplicable to this civil rights
19 case initiated by Plaintiff.

20 **III. Conclusion**

21 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's June 2, 2017,
22 motion for injunctive relief and attorney's fees (ECF No. 17) is DENIED.

23
24 IT IS SO ORDERED.

25 Dated: July 2, 2017

26 /s/ Michael J. Seng
27 UNITED STATES MAGISTRATE JUDGE
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