

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
EASTERN DISTRICT OF CALIFORNIA

L. C. CUNNINGHAM,
Plaintiff,
v.
P. HUMPHEY, et al.,
Defendants.

Case No. 1:23-cv-00564-ADA-SAB (PC)
**FINDINGS AND RECOMMENDATION
RECOMMENDING PLAINTIFF’S SECOND
REQUEST FOR INJUNCTIVE RELIEF BE
DENIED**
(ECF No. 14)

Plaintiff L.C. Cunningham is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On May 22, 2023, Plaintiff filed an “affidavit” in which he claims that staff and inmates have been “taunting” him. (ECF No. 14.) Plaintiff also contends that he is constantly being retaliated against because of his civil rights complaint filings. The Court construes Plaintiff’s “affidavit” as a request for injunctive relief.

I.
LEGAL STANDARD

Federal Rule of Civil Procedure 65 governs injunctions and restraining orders, and requires that a motion for temporary restraining order include “specific facts in an affidavit or a verified complaint [that] clearly show that immediate, and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition,” as well as written

1 certification from the movant's attorney stating “any efforts made to give notice and the reasons
2 why it should not be required.” Fed. R. Civ. P. 65(b).

3 Temporary restraining orders are governed by the same standard applicable to preliminary
4 injunctions, with the exception that preliminary injunctions require notice to the adverse
5 party. See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc., 181 F.Supp.2d 1111,
6 1126 (E.D. Ca. 2001); see also Fed. R. Civ. P. 65(a). Local Rule 231, however, requires notice
7 for temporary restraining orders as well, “[e]xcept in the most extraordinary of circumstances,”
8 and the court considers whether the applicant could have sought relief by motion for preliminary
9 injunction at an earlier date. Local Rule 231(a)-(b). A temporary restraining order “should be
10 restricted to serving [its] underlying purpose of preserving the status quo and preventing
11 irreparable harm just so long as is necessary to hold a hearing, and no longer.” Granny Goose
12 Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70, 415 U.S. 423, 439 (1974).

13 A temporary restraining order, is “an extraordinary remedy” and may be issued only if
14 plaintiff establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in
15 the absence of preliminary relief; (3) that the balance of equities tips in his/her favor; (4) that an
16 injunction is in the public interest. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).
17 Plaintiff bears the burden of clearly satisfying all four prongs. Alliance for the Wild Rockies v.
18 Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011). A TRO will not issue if plaintiff merely shows
19 irreparable harm is possible – a showing of likelihood is required. *Id.* at 1131.

20 The injunctive relief an applicant requests must relate to the claims brought in the
21 complaint. See Pac. Radiation Oncology, LLC v. Queen's Med. Ctr., 810 F.3d 631, 633 (9th Cir.
22 2015) (“When a plaintiff seeks injunctive relief based on claims not pled in the complaint, the
23 court does not have the authority to issue an injunction.”). Absent a nexus between the injury
24 claimed in the motion and the underlying complaint, the court lacks the authority to grant plaintiff
25 any relief. *Id.* at 636.

26 The Prison Litigation Reform Act (“PLRA”) imposes additional requirements on prisoner
27 litigants seeking preliminary injunctive relief against prison officials. In such cases,
28

1 “[p]reliminary injunctive relief must be narrowly drawn, extend no further than necessary to
2 correct the harm the court finds requires preliminary relief, and be the least intrusive means
3 necessary to correct that harm.” 18 U.S.C. § 3626(a)(2); Villery v. California Dep’t of Corr., No.
4 1:150CV-00987-DAD-BAM, 2016 WL 70326, at *3 (E.D. Cal. Jan. 6, 2016). As the Ninth Circuit
5 has observed, the PLRA places significant limits upon a court's power to grant preliminary
6 injunctive relief to inmates, and “operates simultaneously to restrict the equity jurisdiction of
7 federal courts and to protect the bargaining power of prison administrators—no longer may courts
8 grant or approve relief that binds prison administrators to do more than the constitutional
9 minimum.” Gilmore v. People of the State of California, 220 F.3d 987, 998-99 (9th Cir. 2000).
10 The court's jurisdiction is “limited to the parties in this action” and the pendency of an action
11 “does not give the Court jurisdiction over prison officials in general or over the conditions of an
12 inmate's confinement unrelated to the claims before it.” Beaton v. Miller, No. 1:20-cv-0005
13 NONE JLT (PC), 2020 WL 5847014, at *1 (E.D. Cal. Oct. 1, 2020). If a prisoner has been
14 transferred, any sought injunctive relief against the previous facility becomes moot if the
15 prisoner “has demonstrated no reasonable expectation of returning to [the prison].” Johnson v.
16 Moore, 948 F.2d 517, 519 (9th Cir. 1991); Florence v. Kernan, 813 F. App'x 325, 326 (9th Cir.
17 2020). Finally, state governments have “traditionally been granted the widest latitude in the
18 dispatch of [their] own internal affairs.” Rizzo v. Goode, 423, U.S. 362, 378 (1976) (citations
19 omitted). This deference applies even more strongly when the court is asked to involve itself in
20 the administrative decisions of a prison. See Turner v. Safely, 482 U.S. 78, 85 (1987); Sandin v.
21 Conner, 515 U.S. 472, 482-83 (1995).

22 II.

23 DISCUSSION

24 Plaintiff seeks a temporary restraining order and/or preliminary injunction because he is
25 being “taunted” by prison staff and other inmates.

26 After reviewing Plaintiff’s motion, the Court does not find that plaintiff has satisfied his
27 burden to show that immediate and irreparable injury, loss, or damage will result to him before
28

1 any Defendant can be heard, thus precluding a temporary restraining order under Fed. R. Civ. P.
2 65 and Local Rule 231(a). Plaintiff also has not met his burden to justify issuing a preliminary
3 injunction.

4 At this juncture of the case, the Court cannot determine that Plaintiff is likely to succeed
5 on the merits of the Case. Second, the United States Marshal has yet to effect service on any
6 Defendant, and Defendants have no actual notice. Therefore, the Court has no personal
7 jurisdiction over any Defendant at this time. Fed. R. Civ. P. 65(d)(2); Murphy Bros., Inc. v.
8 Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999); Zepeda v. U.S. I.N.S., 753 F.2d 719, 727-
9 28 (9th Cir. 1983). Further, even if the Court had personal jurisdiction over the individuals named
10 in the complaint, Plaintiff has failed to demonstrate imminent irreparable harm necessary to
11 support a preliminary injunction. See Winter, 555 U.S. at 20; Alliance for the Wild Rockies, 632
12 F.3d at 1131. “The fact that plaintiff has met the pleading requirements allowing him to proceed
13 with the complaint does not, ipso facto, entitle him to a preliminary injunction.” Claiborne v.
14 Blauser, No. CIV S-10-2427 LKK, 2011 WL 3875892, at *8 (E.D. Cal. Aug. 31, 2011), report
15 and recommended adopted, No. CIV S-10-2427 LKK, 2011 WL 4765000 (E.D. Cal. Sept. 29,
16 2011). Instead, to meet the “irreparable harm” requirement, Plaintiff must do more than simply
17 allege imminent harm; he must demonstrate it. Caribbean Marine Servs. Co., Inc. v. Baldrige,
18 844 F.2d 668, 674 (9th Cir. 1988). Mere “[s]peculative injury does not constitute irreparable
19 injury sufficient to warrant granting a preliminary injunction.” Id. at 674-75. Accordingly,
20 Plaintiff’s second motion for a temporary restraining order and/or preliminary injunction should
21 be denied.

22 III.

23 RECOMMENDATION

24 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff’s second motion
25 for a temporary restraining order and/or preliminary injunction (ECF No. 14) be denied.

26 This Findings and Recommendation will be submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
28

1 days after being served with this Findings and Recommendation, Plaintiff may file written
2 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
3 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
4 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834,
5 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

6
7 IT IS SO ORDERED.

8 Dated: May 23, 2023


UNITED STATES MAGISTRATE JUDGE

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28