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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LUIS VALENZUELA RODRIGUEZ,
Plaintiff, No. CIV S-08-1028 GEB GGH P
vs.
JAMES TILTON, et al.,
Defendants. ORDER

Plaintiff is a prisoner proceeding pro se and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s July 1, 2011, motion for a temporary restraining order and preliminary injunction. This case proceeds on the third amended complaint containing claims of deliberate indifference to serious medical needs and retaliation. For the reasons that follow, the undersigned will construe plaintiff’s filing as a motion for a protective order.

Protective Order

Local Rule 302 of the Eastern District of California permits magistrate judges to handle all aspects of a prisoner’s case short of jury trial. It has also been interpreted as authorizing magistrate judges to issue orders under § 636(b)(1)(A) for non-dispositive motions or motions not involving injunctive relief. See also United States v. Raddatz, 447 U.S. 667, 673, 100 S. Ct. 2406, 2411 (1980) (magistrate judge may hear any pretrial matter except “dispositive”

1 motions).

2 Clearly, the request addressed in plaintiff's motion does not seek dispositive relief
3 on the merits of the complaint. The motion is addressed to procedures that the parties must
4 utilize in litigating this case. See United States v. Flaherty, 666 F.2d 566, 586 (1st Cir. 1981): "A
5 pretrial matter within the magistrate's jurisdiction would thus seem to be a matter unconnected to
6 issues litigated at trial and not defined with respect to the time of trial." Neither do the rulings
7 herein involve injunctive relief.

8 As in nearly all rulings of magistrate judges pursuant to 28 U.S.C. § 636(b)(1)(A),
9 parties are told to do something or not do something. For example, in typical discovery motions,
10 parties are compelled to answer interrogatories, answer a question or produce a document despite
11 a claim of privilege, attend a deposition at a certain time or place, be compelled to undergo a
12 medical examination, or pay costs associated with discovery in a cost-shifting sense. No one
13 would think of asserting that such non-dispositive orders are invalid because they command or
14 disallow a certain activity. Therefore, the fact that parties are directed in their activities by a
15 magistrate judge, cannot, without more, transform the matter at hand into an "injunctive" relief
16 situation governed by § 636(b)(1)(B). See e.g., Grimes v. City and County of San Francisco, 951
17 F.2d 236 (9th Cir. 1991) (magistrate judge may compel a party to pay prospective sanctions of
18 \$500.00 per day during period for non-compliance with discovery orders); Rockwell Int. Inc. V.
19 Pos-A-Traction Indus., 712 F.2d 1324, 1325 (9th Cir. 1983) (magistrate judge had jurisdiction to
20 order witnesses to answer questions); United States v. Bogard, 846 F.,2d 563, 567 (9th Cir. 1988)
21 superseded by rule on unrelated matter, Simpson v. Lear Astronics Corp., 77 F.3d 1170, 1174
22 (9th Cir. 1996) (magistrate judge may deny requests to see jury selection materials); New York v.
23 United States Metals Roofing Co., 771 F.2d 796 (3rd Cir. 1985) (magistrate judge may prevent a
24 party from releasing discovery information to the public; specifically held not to be an injunction
25 beyond the authority of a magistrate judge); Affelt v. Carr, 628 F. Supp. 1097, 1101 (N.D. Oh.
26 1985) (issuance of gag orders and disqualification of counsel are duties permitted to a magistrate

1 judge.). It is only where the relief sought goes to the merits of plaintiff's actions or to complete
2 stays of an action are orders under § 636(b)(1)(A) precluded. See e.g. Reynaga v. Camisa, 971
3 F.2d 414 (9th Cir. 1992); compare United States Metals etc., 771 F.2d at 801 (orders which
4 restrain or direct the conduct of the parties are not to be characterized as an appealable injunction
5 beyond the authority of the magistrate judge unless the restraint goes to the merits of the action).
6 In other words, a motion for injunctive relief must relate to the allegations in the complaint. If
7 there is no relation, it is not an injunctive relief situation. A party seeking preliminary injunctive
8 relief "must necessarily establish a relationship between the injury claimed in the party's motion
9 and the conduct asserted in the complaint." Devose v. Herrington, 42 F.3d 470, 471 (8th Cir.
10 1994). See also De Beers Consolidated Mines, Ltd. v. United States, 325 U.S. 212, 65 S.Ct.
11 1130 (1945) ("A preliminary injunction is always appropriate to grant intermediate relief of the
12 same character as that which may be granted finally. The injunction in question is not of this
13 character. It is not an injunction in the cause, and it deals with a matter lying wholly outside the
14 issues in the suit."); Board of Trustees etc. v. Welfare Trust Fund etc, 315 Fed. Appx. 175 (9th
15 Cir. 2009). In other words, plaintiff must seek injunctive relief related to the merits of his
16 underlying claim.

17 Moreover, the rule that governs interlocutory injunctions, Fed. R. Civ. P. 65, also
18 indicates that the matters at issue have to be encompassed by the complaint, e.g., provision which
19 allows the hearing on preliminary injunction to be accelerated into a trial on the merits,
20 preserving the right to jury trial if otherwise appropriate, making evidence received at the hearing
21 on preliminary injunction admissible at trial. None of the provisions would make sense if
22 disputes outside the complaint, and on which no trial by definition will be had, could be
23 considered as proceedings for injunctions. In addition, the standards for granting injunctions are
24 much different than the standards applicable to protective orders. Applying established standards
25 on the need to grant an injunction only in extraordinary circumstances, absence of legal remedy,
26 balance of hardships, irreparable harm, and so forth are foreign to resolution of discovery and

1 other procedural disputes which crop up in the course of a litigation.

2 In the instant case, plaintiff's requests do not go to the merits of plaintiff's action.
3 The gravamen of the Third Amended Complaint concerns medical malpractice, deficient
4 administrative remedies and retaliation allegedly undertaken with respect to specific grievances.
5 None of plaintiff's allegations in the motion relate to these facts. Accordingly, this matter may be
6 handled by court order as it is merely a request for a protective order of sorts. Plaintiff's motion
7 seeks a court order for the prison and all prison employees to stop retaliatory deprivations and
8 actions against plaintiff that will put his safety or life at risk. Plaintiff provides few details
9 concerning his requests, other than referring to his enemy concerns, medical condition and the
10 releasing of his confidential information, without any specific details. Plaintiff also wishes to be
11 transferred to a different prison and more access to his legal files and law library.

12 Plaintiff also states that he tried to send a letter to the court a month ago regarding
13 access to the law library, but the court never received it. In fact, the court has received several
14 letters and motions from plaintiff and on June 22, 2011, the court extended discovery until July
15 15, 2011, and denied plaintiff's law library requests for specific reasons set forth in that Order,
16 including that plaintiff failed to provide specific factual support for his allegations.¹

17 Similarly, the instant motion merely contains general accusations and it would be
18 impossible for the court to provide relief. It is not clear for example, how prison staff are most
19 recently retaliating against him and placing his life in danger, as plaintiff provides no support.
20 With respect to plaintiff's specific requests regarding law library access, the request is denied as
21 the court addressed these issues in its June 22, 2011 Order. The remainder of plaintiff's motion
22 is frivolous and is denied.

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25 ¹ The handwriting in parts of the instant motion and at times in many prior motions
26 written by plaintiff is illegible.

Accordingly, IT IS HEREBY ORDERED that plaintiff's July 1, 2011, motion for a temporary restraining order and preliminary injunction (Doc. 65), construed as a protective order, is denied.

DATED: July 7, 2011

/s/ Gregory G. Hollows

UNITED STATES MAGISTRATE JUDGE

GGH: AB
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