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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 SAMMY PAGE,

2:08-cv-02231-SRT (PC)

12 Plaintiff,

**ORDER DENYING REQUEST FOR
TEMPORARY RESTRAINING
ORDER**

13 v.

14 STEPHEN MAYBERG, et. al.,

15 Defendants.
16
17 _____ /

18 Sammy Page, civilly committed under California's Sexually Violent Predator Act ("SVPA")
19 and proceeding *pro se*, filed a request for a temporary restraining order on September 24, 2008. Page
20 filed the request against Stephen Mayberg, director of the California Department of Mental Health
21 ("DMH"), Jeremy Coles and John Hupka, two clinical evaluators for DMH, and Governor
22 Schwarzenegger. Page requests a temporary restraining order against enforcement of SVPA because
23 he alleges that it rests on a DMH regulation that fails to meet the standards of the Administrative
24 Procedure Act ("APA"). In support, Page cites a decision of the California Office of Administrative
25 Law ("OAL") that found that certain passages of DHM's "Clinical Evaluator Handbook and
26 Standardized Assessment Protocol" manual met the definition of a "regulation" but were not adopted
27 pursuant to the APA, making them "underground" regulations.

28 The legal principles applicable to requests for injunctive relief, such as a temporary restraining

1 order, are well established. To prevail, the moving party must show either a likelihood of success on
2 the merits of the underlying controversy and the possibility of irreparable injury, or that serious
3 questions are raised and the balance of hardships tips sharply in the movant's favor. *See Coalition for*
4 *Economic Equity v. Wilson*, 122 F.3d 692, 700 (9th Cir. 1997); *Oakland Tribune, Inc. v. Chronicle*
5 *Publ'g Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985). The two formulations represent two points on a
6 sliding scale with the focal point being the degree of irreparable injury shown. *See Oakland Tribune*,
7 762 F.2d at 1376. Under any formulation of test, however, the moving party must demonstrate that
8 there exists a significant threat of irreparable injury. *See id.* In the absence of a significant showing
9 of possible irreparable harm, the court need not reach the issue of likelihood of success on the merits.
10 *See id.*

11 Page's request fails under these standards because he has not made a showing of a significant
12 threat of irreparable injury. The regulations he challenges are guidelines on how a clinical evaluator
13 should conduct evaluations of civilly committed sexually violent predators. Although an OAL
14 determination that a regulation is an "underground" regulation is entitled to deference, it is not
15 binding on this Court. *People v. Medina*, 89 Cal. Rptr. 3d 830, 837 (Ct. App. Cal. 2009). Even if
16 this Court were to find that the DMH manual is an "underground" regulation, irreparable injury does
17 not result from its use. At worst, Page would be subjected to an evaluation of his mental health.
18 Such an evaluation does not constitute irreparable injury.

19 Finally, to the extent that Page challenges his confinement generally through this TRO
20 request, that request is denied. The SVPA has been upheld against various challenges, *see Medina*,
21 89 Cal. Rptr. at 842 n.10, and Page's allegation of an underground regulation in this TRO request
22 does not suffice to undermine confidence in the validity of his civil commitment. In addition, "[t]he
23 court shall give substantial weight to any adverse impact on public safety or the operation of a
24 criminal justice system caused by the preliminary relief." 18 U.S.C. § 3626(a)(2).

25 IT IS ORDERED:

26 The request for a temporary restraining order is DENIED.

27 DATED: April 14, 2009

28 /s/ Sidney R. Thomas

Sidney R. Thomas, United States Circuit Judge
-2- Sitting By Designation