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

MARVIN GLENN HOLLIS,

Plaintiff,

No. 2:09-cv-3431 FCD KJN P

vs.

M.S. DOWNING, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding without counsel and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. Before the court is plaintiff’s January 22, 2010 motion for a temporary restraining order or preliminary injunctive relief in which he alleges defendants deny him food as well as harass him by confiscating legal papers related to his active cases. On February 3, 2010, the Office of the Attorney General (Attorney General) was served with plaintiff’s motion for preliminary injunctive relief and ordered to respond. The Attorney General responded on February 12, 2010.

The legal principles applicable to a request for injunctive relief are well established. To prevail, the moving party must show either a likelihood of success on the merits and the possibility of irreparable injury, or that serious questions are raised and the balance of hardships tips sharply in the movant’s favor. See Coalition for Economic Equity v. Wilson, 122

1 F.3d 692, 700 (9th Cir. 1997); Oakland Tribune, Inc. v. Chronicle Publ'g Co., 762 F.2d 1374,
2 1376 (9th Cir. 1985). The two formulations represent two points on a sliding scale with the focal
3 point being the degree of irreparable injury shown. Oakland Tribune, 762 F.2d at 1376. “Under
4 any formulation of the test, plaintiff must demonstrate that there exists a significant threat of
5 irreparable injury.” Id. In the absence of a significant showing of possible irreparable harm, the
6 court need not reach the issue of likelihood of success on the merits. Id.

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

11 Initially, the principal purpose of preliminary injunctive relief is to preserve the
12 court's power to render a meaningful decision after a trial on the merits. See C. Wright & A.
13 Miller, 11 Federal Practice and Procedure, §2947 (1973). In addition to demonstrating that he
14 will suffer irreparable harm if the court fails to grant the preliminary injunction, plaintiff must
15 show a “fair chance of success on the merits” of his claim. Sports Form, Inc. v. United Press
16 International, Inc., 686 F.2d 750, 754 (9th Cir. 1982), quoting Benda v. Grand Lodge of Intern.
17 Ass'n of Machinists and Aerospace Workers, 584 F.2d 308, 315 (9th Cir. 1979). Implicit in this
18 required showing is that the relief awarded is only temporary and there will be a full hearing on
19 the merits of the claims raised in the injunction when the action is brought to trial.

20 Plaintiff filed the instant motion on January 22, 2010, alleging ongoing incidents
21 at High Desert State Prison (HDSP). However, also on January 22, 2010, plaintiff filed a notice
22 indicating that on January 20, 2010, he had been transferred to a different prison, California
23 Correctional Institution. Because plaintiff is no longer subject to actions by the named
24 defendants, his motion for injunctive relief is moot. These claims do not implicate this court's
25 jurisdiction in a way that might justify application of the All Writs Act to reach officials at
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1 California Correctional Instituion who are not named in the underlying litigation.¹ Zenith Radio
2 Corp. v. Hazeltine Research, Inc., 395 U.S. 100 (1969). For this reason, plaintiff’s motion for
3 preliminary injunction should be denied.

4 On January 22, 2010, plaintiff also filed a motion for expedited screening of the
5 instant action. Review of court records reveals that this action was screened by order filed
6 February 3, 2010. Thus, plaintiff’s motion is moot and will be denied.

7 IT IS HEREBY ORDERED that plaintiff’s January 22, 2010 motion for expedited
8 screening (Dkt. No. 8) is denied; and

9 IT IS HEREBY RECOMMENDED that plaintiff’s January 22, 2010 motion for
10 injunctive relief (Dkt No. 10) be denied.

11 These findings and recommendations are submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
13 one days after being served with these findings and recommendations, plaintiff may file written
14 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
15 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the

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23 ¹ The fact that injunctive relief is sought from one not a party to litigation does not
24 automatically preclude the court from acting. The All Writs Act, 28 U.S.C. § 1651(a) permits the
25 court to issue writs “necessary or appropriate in aid of their jurisdictions and agreeable to the
26 usages and principles of law.” The All Writs Act is meant to aid the court in the exercise and
preservation of its jurisdiction. Plum Creek Lumber Company v. Hutton, 608 F.2d 1283, 1289
(9th Cir. 1979). The United States Supreme Court has authorized the use of the All Writs Act in
appropriate circumstances against persons or entities not a party to the underlying litigation.
United States v. New York Telephone Co., 434 U.S. 159, 174 (1977).

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
2 F.2d 1153 (9th Cir. 1991).

3 DATED: February 25, 2010

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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