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

JOSEPH A. SHERMAN,

Plaintiff,

No. CIV S- 11-0820 JAM GGH PS

vs.

CITY OF DAVIS,

Defendant.

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action pro se and in forma pauperis. This proceeding was referred to this court by Local Rule 302(21), pursuant to 28 U.S.C. § 636(b)(1). Before the court is plaintiff’s motion for injunctive relief, filed March 26, 2012. For the reasons stated herein, the motion should be denied.¹

I. Legal Standards for Temporary Restraining Order / Preliminary Injunction

The standards governing the issuance of temporary restraining orders are “substantially identical” to those governing the issuance of preliminary injunctions. Stuhlberg Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc., 240 F.3d 832, 839 n. 7 (9th Cir.2001). Therefore, “[a] plaintiff seeking a [TRO] must establish that he is likely to succeed on the merits,

¹ A response from defendant is unnecessary.

1 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
2 equities tips in his favor, and that an injunction is in the public interest.” Am. Trucking Ass'n,
3 Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting Winter v. Natural Res.
4 Def. Council, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 374 (2008)). “A preliminary injunction is
5 appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were
6 raised and the balance of hardships tips sharply in the plaintiff’s favor.” Alliance for the Wild
7 Rockies v. Cottrell, 632 F.3d 1127. 1134-35 (9th Cir. 2011) (quoting Lands Council v. McNair,
8 537 F.3d 981, 97 (9th Cir. 2008) (en banc), and finding that the “serious questions” test remain
9 valid after Winter). A TRO is “an extraordinary remedy that may only be awarded upon a clear
10 showing that the plaintiff is entitled to such relief.” Winter, 129 S. Ct. at 376.

11 II. Analysis

12 The motion for injunctive relief refers to documents previously filed with the
13 court in case number Civ.S.04-2320, a case which was closed in 2008, and which appeal was
14 denied in 2010 by the Ninth Circuit Court of Appeals. These documents are dated variously
15 from 2006 through 2008. Plaintiff also refers to actions which he claims support his “affidavit”
16 of irreparable injury, all of which allegedly occurred in 2008 or earlier. Although plaintiff
17 contends that defendant’s policies have resulted in “violative acts against plaintiff,” which have
18 continued to the present, plaintiff has not provided any facts showing that he has recently been
19 subjected such acts, or that he will suffer irreparable harm in the absence of injunctive relief.
20 Nor has he shown that there are serious questions in this case or that the balance of hardships tips
21 in his favor. This court’s recent findings and recommendations, issued March 6, 2012, has for
22 the most part addressed the merits and discredits these factors.

23 III. Conclusion

24 Accordingly, IT IS RECOMMENDED that: plaintiff’s motion for injunctive
25 relief, filed March 26, 2012, (dkt. no. 23), be denied.

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