

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  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY O’KEEFE,  
Plaintiff,  
v.  
JERRY BROWN, et al.,  
Defendants.

No. 2:11-cv-2659 KJM KJN P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for a temporary restraining order. (ECF No. 134.) For the following reasons, the undersigned recommends that this motion be denied.

This action is proceeding on plaintiff’s fourth amended complaint. (ECF No. 114.) On January 29, 2014, the undersigned issued an order screening the fourth amended complaint. (ECF No. 115.) The court ordered service of defendant Belavich, Swift, Vasquez, Grawal, Ferguson and Salkowaltz as to plaintiff’s individual claim that he is not receiving treatment for voyeurism and exhibitionism at California State Prison-Corcoran (“Corcoran”). (Id.)

In the pending motion for injunctive relief, plaintiff seeks an order prohibiting Sergeant McLaughlin from retaliating against plaintiff for the filing of an administrative appeal against him on April 17, 2014. Plaintiff alleges that Father Vanissery approved plaintiff’s request to

1 order/possess a religious medal. Plaintiff alleges that Sergeant McLaughlin intercepted the  
2 documents approving plaintiff's request for a religious medal and refused to give them back to  
3 plaintiff. Plaintiff filed a grievance against Sergeant McLaughlin based on this incident.

4 A temporary restraining order is an extraordinary and temporary "fix" that the court may  
5 issue without notice to the adverse party if, in an affidavit or verified complaint, the movant  
6 "clearly show[s] that immediate and irreparable injury, loss, or damage will result to the movant  
7 before the adverse party can be heard in opposition." See Fed.R.Civ.P. 65(b)(1)(A). The purpose  
8 of a temporary restraining order is to preserve the status quo pending a fuller hearing. See  
9 generally, Fed.R.Civ.P. 65; see also, L.R. 231(a). It is the practice of this district to construe a  
10 motion for temporary restraining order as a motion for preliminary injunction. Local Rule 231(a);  
11 see also, e.g., Aiello v. OneWest Bank, 2010 WL 406092, \*1 (E.D.Cal. 2010) (providing that  
12 "[t]emporary restraining orders are governed by the same standard applicable to preliminary  
13 injunctions") (citations omitted).

14 The party requesting preliminary injunctive relief must show that "he is likely to succeed  
15 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
16 the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v.  
17 Natural Resources Defense Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v. Selecky, 586 F.3d  
18 1109, 1127 (9th Cir. 2009) (quoting Winter). The propriety of a request for injunctive relief  
19 hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean  
20 Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

21 Alternatively, under the so-called sliding scale approach, as long as the plaintiff  
22 demonstrates the requisite likelihood of irreparable harm and can show that an injunction is in the  
23 public interest, a preliminary injunction may issue so long as serious questions going to the merits  
24 of the case are raised and the balance of hardships tips sharply in plaintiff's favor. Alliance for  
25 Wild Rockies v. Cottrell, 632 F.3d 1127, 1131–36 (9th Cir. 2011) (concluding that the "serious  
26 questions" version of the sliding scale test for preliminary injunctions remains viable after  
27 Winter).

28 ///

1           The principal purpose of preliminary injunctive relief is to preserve the court's power to  
2 render a meaningful decision after a trial on the merits. See 11A Charles Alan Wright & Arthur  
3 R. Miller, Federal Practice and Procedure, § 2947 (2d ed. 2010). As noted above, in addition to  
4 demonstrating that he will suffer irreparable harm if the court fails to grant the preliminary  
5 injunction, plaintiff must show a "fair chance of success on the merits" of his claim. Sports  
6 Form, Inc. v. United Press International, Inc., 686 F.2d 750, 754 (9th Cir. 1982) (internal citation  
7 omitted). Implicit in this required showing is that the relief awarded is only temporary and there  
8 will be a full hearing on the merits of the claims raised in the injunction when the action is  
9 brought to trial. In cases brought by prisoners involving conditions of confinement, any  
10 preliminary injunction "must be narrowly drawn, extend no further than necessary to correct the  
11 harm the court finds requires preliminary relief, and be the least intrusive means necessary to  
12 correct the harm." 18 U.S.C. § 3626(a)(2).

13           In addition, as a general rule this court is unable to issue an order against individuals who  
14 are not parties to a suit pending before it. Zenith Radio Corp. v. Hazeltine Research, Inc., 395  
15 U.S. 100 (1969).

16           Plaintiff's claims regarding Sergeant McLaughlin are unrelated to the claims on which  
17 this action is proceeding, i.e., plaintiff's claims that he is not receiving treatment for  
18 exhibitionism and voyeurism. Because the grounds of plaintiff's request for injunctive relief are  
19 unrelated to the merits of the instant action, the court is unable to issue an order addressing  
20 plaintiff's pending motion for injunctive relief.

21           Accordingly, IS HEREBY RECOMMENDED that plaintiff's motion for injunctive relief  
22 (ECF No. 134) be denied.

23           These findings and recommendations are submitted to the United States District Judge  
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
25 after being served with these findings and recommendations, any party may file written  
26 objections with the court and serve a copy on all parties. Such a document should be captioned  
27 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
28 objections shall be filed and served within fourteen days after service of the objections. The

1 parties are advised that failure to file objections within the specified time may waive the right to  
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: May 1, 2014

4

5 Ok2659.pi

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

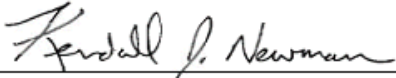
24

25

26

27

28

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE