



1 order for a T.R.O. because these employees of the Department of  
2 Correction are illegal [sic] reading, opening and corrupting my  
3 mail. Even though I know I'm nowhere near San Joaquin County, I  
4 have a complaint against 2 party of that county Deuel Vocational  
5 Institution and San Joaquin County Jail both et. Al. I believe word  
6 traveled with me, with the claim in my property. I'm hereby  
7 requesting a TRO for both claims. On these officers. In Pelican  
8 Bay State Prison.

9 Id. at 2.<sup>1</sup>

10 For the reasons set forth below, plaintiff's request for a temporary restraining order will be  
11 denied.

12 The standards governing the issuance of temporary restraining orders are "substantially  
13 identical" to those governing the issuance of preliminary injunctions. Stuhlbarg Intern. Sales Co.,  
14 Inc. v. John D. Brushy and Co., Inc., 240 F.3d 832, 839 n. 7 (9th Cir. 2001). Therefore, "[a]  
15 plaintiff seeking a [TRO] must establish that he is likely to succeed on the merits, that he is likely  
16 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in  
17 his favor, and that an injunction is in the public interest." Am. Trucking Ass'n, Inc. v. City of Los  
18 Angeles, 559 F.3d 1046, 1052 (9th Cir.2009) (quoting Winter v. Natural Res. Def. Council, Inc.,  
19 555 U.S. 7, 20 (2008)). A preliminary injunction is appropriate when a plaintiff demonstrates . . .  
20 "serious questions going to the merits and a hardship balance [] tips sharply toward the plaintiff,  
21 ... assuming the other two elements of the Winter test are also met." Alliance for the Wild  
22 Rockies v. Cottrell, 632 F.3d 1127, 1131-32 (9th Cir. 2011). A TRO is "an extraordinary remedy  
23 that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."  
24 Winter, 555 U.S. at 22.

25 The Ninth Circuit has reiterated that under either formulation of the principles, if the  
26 probability of success on the merits is low, preliminary injunctive relief should be denied:

27 Martin explicitly teaches that "[u]nder this last part of the  
28 alternative test, even if the balance of hardships tips decidedly in  
favor of the moving party, it must be shown as an irreducible  
minimum that there is a fair chance of success on the merits."

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<sup>1</sup> The first portion of plaintiff's motion appears to be a supplement to his Third Amended  
Complaint. See ECF No. 22 at 1.

1 Johnson v. California State Bd. of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995) (quoting  
2 Martin v. International Olympic Comm., 740 F.2d 670, 675 (9th Cir. 1984).

3 Plaintiff does not articulate specifically what he would like to enjoin, or against whom he  
4 would like the injunction to issue. This is problematic because it leaves this court with no way to  
5 determine, among other things, whether it has personal jurisdiction over the target of the  
6 injunction. Cf. Fed. R. Civ. P. 65(d)(2) (persons who may be bound by an injunction include the  
7 parties, their officers, agents, servants, employees, and attorneys, and persons in active concert).  
8 A review of the motion suggests that plaintiff seeks an order directing plaintiff's current prison,  
9 and its officials, not to interfere with plaintiff's mail. However, plaintiff's current prison is not a  
10 defendant in this action, nor are any officials working at it. Accordingly, this court lacks  
11 jurisdiction to issue an order directing officials at Pelican Bay not to interfere with plaintiff's  
12 mail. See, e.g., Zepeda v. INS, 753 F.2d 719, 727 (9th Cir. 1985) (a federal court may not  
13 attempt to determine the rights of persons not before the court).

14 In addition, plaintiff makes no showing of imminent harm or injury. General allegations  
15 that employees of the C.D.C.R. are "illegally reading and opening and corrupting my mail,"  
16 without specific facts about what mail was opened or how it was corrupted, do not adequately  
17 support plaintiff's claim for preliminary injunctive relief. See Caribbean Marine Services Co. v.  
18 Baldrige, 844 F.2d 668, 674 (9th Cir. 1988) ("[A] plaintiff must demonstrate immediate  
19 threatened injury as a prerequisite to preliminary injunctive relief.").

20 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for a temporary  
21 restraining order (ECF No. 22) is denied.

22 DATED: July 1, 2013

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25 ALLISON CLAIRE  
26 UNITED STATES MAGISTRATE JUDGE