



1 Legal Standards

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

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

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

26 The principal purpose of preliminary injunctive relief is to preserve the court’s power to  
27 render a meaningful decision after a trial on the merits. See 11A Charles Alan Wright & Arthur  
28 R. Miller, Federal Practice and Procedure, § 2947 (2d ed. 2010). As noted above, in addition to

1 demonstrating that he will suffer irreparable harm if the court fails to grant the preliminary  
2 injunction, plaintiff must show a “fair chance of success on the merits” of his claim. Sports  
3 Form, Inc. v. United Press International, Inc., 686 F.2d 750, 754 (9th Cir. 1982) (internal citation  
4 omitted). Implicit in this required showing is that the relief awarded is only temporary and there  
5 will be a full hearing on the merits of the claims raised in the injunction when the action is  
6 brought to trial. In cases brought by prisoners involving conditions of confinement, any  
7 preliminary injunction “must be narrowly drawn, extend no further than necessary to correct the  
8 harm the court finds requires preliminary relief, and be the least intrusive means necessary to  
9 correct the harm.” 18 U.S.C. § 3626(a)(2).

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

### 13 Motion for Temporary Restraining Order Against Defendant Haring

14 Plaintiff seeks to have the August 5, 2013, and October 11, 2013 rules violation reports  
15 expunged, or, in the alternative, to modify the finding to reflect that plaintiff’s mental illness  
16 contributed to the infraction. (ECF No. 19 at 9.)

17 As noted in the court’s screening order, the instant action is proceeding on plaintiff’s  
18 Rehabilitation Act and Eighth Amendment claims against defendant Haring based on incidents  
19 that occurred in September of 2011. Plaintiff did not challenge the 2013 rules violation reports in  
20 this action. Because plaintiff is not challenging the 2013 rules violation reports in this action,  
21 there would not be a full hearing on the merits of plaintiff’s claims raised in his motion when this  
22 action goes to trial. Therefore, plaintiff’s motion for a temporary restraining order based on the  
23 2013 rules violation reports is denied.

### 24 Third Motion for Temporary Restraining Order

25 On February 19, 2014, plaintiff filed a third motion for temporary restraining order along  
26 with his proposed third amended complaint and motion to amend. Plaintiff asks the court to order  
27 “CSP-SAC Administrative Officials to not transfer plaintiff, who is severely mentally ill, to any  
28 of the department’s security housing units,” but to “retain him in ad seg” but in “single cell

1 status.” (ECF No. 28 at 20.) Plaintiff also asks the court to order that plaintiff retain possession  
2 of his television set, be provided “single cell status,” to exclude plaintiff from being housed in  
3 any cells with side-by-side beds occupied by any other inmate, and to order CSP-SAC officials to  
4 refrain from retaliating against plaintiff. (ECF No. 28 at 20-21.)

5 Injunctive relief is an “extraordinary remedy that may only be awarded upon a clear  
6 showing that the plaintiff is entitled to such relief.” Winter, 555 U.S. 7, 22 (2008) (citing  
7 Mazurek v. Armstrong, 520 U.S. 968, 972 (1997)). The purpose of preliminary injunctive relief is  
8 to maintain the status quo. “A preliminary injunction may not issue when it is not of the same  
9 character as that which may be granted finally and when it deals with matters outside the issues in  
10 the underlying suit.” 11A Wright & Miller § 2947 (2010).

11 Plaintiff cannot bring new allegations into his suit by means of a motion for a preliminary  
12 injunction. Otherwise, plaintiff could circumvent the requirement that he exhaust his  
13 administrative remedies by simply bringing new allegations into his suit through such a motion.  
14 Plaintiff must also demonstrate that his claims are likely to succeed, but plaintiff’s claims cannot  
15 succeed if the allegations in his motion for a preliminary injunction were not raised in the  
16 operative pleading. See Hunter v. Hazelwood, 2006 WL 925142, at \*4 (W.D. Wash. Apr.10,  
17 2006) (denying motion for preliminary injunction because it contained new allegations not  
18 included in the original complaint that did not involve the defendants and appeared not to have  
19 been exhausted administratively).

20 By separate order, plaintiff’s motion to amend was denied. In this motion for injunctive  
21 relief, plaintiff seeks relief based on various claims not included, and defendants not named, in  
22 the operative second amended complaint. In addition, many of plaintiff’s current requests were  
23 previously denied by the undersigned on September 24, 2013.<sup>2</sup>

24 \_\_\_\_\_  
25 <sup>2</sup> Indeed, in plaintiff’s September 12, 2013 motion, plaintiff sought, *inter alia*, a court order  
26 excluding plaintiff from being housed in a side-by-side bed cell, and requiring prison officials to (a)  
27 house plaintiff in a single cell, (b) modify prison policy to refrain from housing any physically  
28 disabled inmate in side-by-side bed cells; (c) provide plaintiff with his television while he is housed in  
administrative segregation, (d) issue plaintiff his rules violation report (“RVR”) 115, Log No. C-13-  
06-051, which apparently resulted in the alleged deprivation of plaintiff’s television, and (d) refrain  
from retaliating against plaintiff because of this action. (See ECF No. 18 at 1-2.)

1 In the second amended complaint, plaintiff challenges concrete actions taken in 2011. In  
2 the instant motion, plaintiff challenges the prison's policy of housing disabled prisoners in side-  
3 by-side bed cells, his placement in administrative segregation and the security housing unit, as  
4 well as the deprivation of his television, most of which appear to have occurred sometime in  
5 2013. None of these claims are at issue in plaintiff's second amended complaint, and therefore  
6 will not receive a trial on the merits in this action.<sup>3</sup>

7 In his motion, plaintiff also discusses the actions taken by defendant Haring in 2011;  
8 however, plaintiff fails to demonstrate that defendant Haring has subsequently violated plaintiff's  
9 rights or poses a current risk to plaintiff at this time. In addition, although plaintiff has made  
10 allegations in his second amended complaint sufficient to state cognizable civil rights violations,  
11 plaintiff has not established that he is likely to succeed on the merits of such claims.


12 For all of these reasons, plaintiff's third motion is denied without prejudice.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Plaintiff's motion for temporary restraining order (ECF No. 19) is denied without  
15 prejudice; and  
16 2. Plaintiff's motion for temporary restraining order (ECF No. 28) is denied without  
17 prejudice.

18 Dated: March 31, 2014

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

3 In addition, to the extent that plaintiff now seeks relief based on findings in Coleman v. Wilson,  
912 F.Supp. 1282 (E.D. Cal. 1995), plaintiff must first exhaust his administrative remedies as to  
such claims prior to bringing suit in federal court. The Prison Litigation Reform Act (PLRA)  
provides that, “[n]o action shall be brought with respect to prison conditions under section 1983  
of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other  
correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C.  
§ 1997e(a). Exhaustion requires that the prisoner complete the administrative review process in  
accordance with all applicable procedural rules, including deadlines. Woodford v. Ngo, 548 U.S.  
81, 90-91 (2006).