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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY E. WALKER,  
Plaintiff,  
v.  
MOHADJER, Clinical Psychologist, et al.,  
Defendants.

No. 2:13-cv-1193 WBS AC P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in an action brought pursuant to 42 U.S.C. § 1983. The following matters are before the court: (1) defendant’s motion to revoke plaintiff’s in forma pauperis status and to dismiss (ECF No. 48); (2) plaintiff’s motion for a temporary restraining order (ECF No. 51); (3) plaintiff’s motion to vacate or stay (ECF No. 63); and (4) plaintiff’s motion to compel (ECF No. 67).

To date, plaintiff has filed five motions for preliminary injunctive relief. His motions for a temporary restraining order filed on July 22, 2013 and on July 30, 2013 (ECF Nos. 13, 17) were denied on September 13, 2013. See ECF Nos. 20, 32. Plaintiff unsuccessfully sought reconsideration (see ECF Nos. 36, 41), and then appealed the district court’s ruling on these motions (ECF Nos. 41, 42). Before the appeal was even processed to the Ninth Circuit, plaintiff filed a third motion for a Temporary Restraining Order/preliminary injunction on October 1, 2013. ECF No. 38. This motion was also denied by the district court. See ECF No. 50 (Order

1 filed January 7, 2014, adopting Findings and Recommendations filed October 3, 2013 (ECF No.  
2 39)). Plaintiff's fourth motion for a TRO, which is presently before the court, was filed on  
3 January 10, 2014. ECF No. 51. The interlocutory appeal of the rulings on plaintiff's July 2013  
4 motions for preliminary injunctive relief has now been dismissed by the Ninth Circuit. See Order  
5 filed on May 2, 2014. ECF No. 69.

6 On November 21, 2013, defendant Mohadjer filed a motion to revoke plaintiff's in forma  
7 pauperis status and to dismiss. ECF No. 48. Plaintiff did not timely file an opposition. By Order  
8 filed on January 14, 2014, plaintiff was directed to file his opposition to the motion. ECF No. 52.  
9 Also on January 14, 2014, the undersigned recommended that the fourth TRO motion be denied  
10 as insufficiently supported. ECF No. 52. The next day the court docketed yet another TRO  
11 motion (ECF No. 53) which was vacated as duplicative of the previously-filed motion, which was  
12 still pending when the latest request was submitted. ECF No. 54.

13 On February 13, 2014, plaintiff sought an extension of time to object to the pending  
14 Findings and Recommendations and to oppose the motion to revoke IFP status. In light of  
15 plaintiff's representations that he had been separated from his legal property in a recent transfer  
16 and lacked law library access, the undersigned vacated the Findings and Recommendations. ECF  
17 No. 60. Defendants were directed to respond to plaintiff's fourth motion for preliminary  
18 injunctive relief within twenty days, and to advise the court of the status of plaintiff's access to  
19 the law library and receipt of his legal property. Id. In addition, plaintiff was granted an  
20 extension of time to oppose the motion to revoke IFP and to dismiss within thirty days of notice  
21 to the court by defendants that plaintiff had been provided his legal property related to the instant  
22 case and adequate law library access. Id. Plaintiff was cautioned that his failure to file an  
23 opposition within the time provided by this order would be deemed a statement of non-opposition  
24 and would result in a recommendation that this action be dismissed pursuant Federal Rule of Civil  
25 Procedure 41(b). Id.

26 In response, defendants provided a memorandum from a facility captain at the California  
27 Health Care Facility dated February 18, 2014, indicating that plaintiff had been an inpatient at the  
28 California Health Care Facility since January 30, 2014 and that the status of his mental health and

1 his treatment regime had “severely restricted his ability to have access to his legal documents and  
2 legal library usage.” ECF No. 61-1 at 4. The undersigned, by order filed on February 27, 2014,  
3 granted defendants’ request to extend the time for their response to plaintiff’s motion for  
4 preliminary injunctive relief until after the motion to revoke IFP had been adjudicated. ECF No.  
5 62. Counsel for defendants was also directed to notify the court as soon as counsel was informed  
6 plaintiff’s legal materials had been returned to him and he had law library access. Id. Plaintiff  
7 was informed that once such notice was filed and served, he would have thirty days to file his  
8 opposition to the motion to revoke his IFP status<sup>1</sup> and was again cautioned that failure to file an  
9 opposition timely would be deemed a statement of non-opposition and would result in a  
10 recommendation that this action be dismissed. Id. The court’s docket indicates that no such  
11 notice has yet been filed.

12 Plaintiff then filed, on March 4, 2014, a “motion to vacate or stay motion to revoke IFP  
13 and to dismiss. . . .” ECF No. 63. In that motion, plaintiff appears to be confused as to how this  
14 action proceeds. Plaintiff asks that defendants’ motion to revoke IFP be vacated or stayed on  
15 grounds that defendants have not yet responded to the operative second amended complaint.  
16 However, applicability of the “imminent danger to serious physical injury exception” under 28  
17 U.S.C. § 1915(g), which plaintiff evidently seeks to, is determined on the basis of the original  
18 complaint. See Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir.2007); see id. at 1055 (“the  
19 exception applies if the complaint makes a plausible allegation that the prisoner faced ‘imminent  
20 danger of serious physical injury’ at the time of filing.”).

21 On April 7, 2014, plaintiff filed a motion indicating that he has been returned to R.J.  
22 Donovan (RJD) and seeks access to his legal property. ECF No. 67. Plaintiff again appears to be  
23 confused about what is at issue in the motion to revoke IFP status, incorrectly arguing that the  
24 motion may technically be void in light of the filing of the now operative second amended  
25 complaint. In response, counsel for defendants states that counsel had been working with the  
26 litigation coordinator at RJD to locate plaintiff’s legal materials, but that plaintiff had since been

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27 <sup>1</sup> Plaintiff was also informed that while he was not required to, he might file his opposition sooner  
28 if he could do so under his then-present circumstances. Id.

1 transferred to a mental health crisis bed at California Men’s Colony. ECF No. 68. Counsel  
2 further informs the court that plaintiff was returned to RJD on April 10, 2014, but the next day  
3 was again placed in a mental health crisis bed (MHCB) and was therefore unable to take  
4 possession of his legal materials. Id. Counsel reports that “all of plaintiff’s known legal  
5 materials” have now been located by RJD staff and will be released to plaintiff as permitted by  
6 his housing restrictions once he is released from the MHCB. Id. Moreover, following the  
7 completion of his treatment plaintiff is to have law library access. Id. Because plaintiff’s  
8 location and housing arrangements change rapidly, counsel for defendants asks that the court  
9 order plaintiff to advise it of issues relating to his access to legal materials and law library, rather  
10 than burdening defendants’ counsel with the time-consuming task of monitoring plaintiff’s  
11 movements. Id.

12 The TRO motion that remains pending was not supported by the necessary documentation  
13 when it was filed. See ECF No. 52 (Findings and Recommendations) (vacated by ECF No. 60).  
14 Plaintiff’s circumstances have changed since that time, and remain in flux. The court’s attempts  
15 to supplement and clarify the factual record have not resulted in a record that permits adjudication  
16 of the merits of the TRO motion. Moreover, plaintiff’s filings are extremely difficult to  
17 understand. Given these circumstances, it is not possible for the court to determine the facts that  
18 are potentially material to the TRO request.

19 Accordingly, upon consideration of the present posture of this case, the court makes the  
20 following ORDERS:

- 21 1. Defendants’ motion to revoke plaintiff’s in forma pauperis status and to dismiss (ECF  
22 No. 48) is VACATED without prejudice to its renewal once plaintiff notifies the court, and  
23 defendants’ counsel confirms, that he has been reunited with his legal property and has law  
24 library access;
- 25 2. Upon re-notice of the motion to revoke IFP status, plaintiff will have thirty days to file  
26 his opposition; failure to file a timely opposition will be deemed a statement of non-opposition  
27 and result in a recommendation of dismissal of this action;
- 28 3. Plaintiff’s inadequately-supported motion for a TRO (ECF No. 51) is also VACATED

1 without prejudice to its renewal in compliance with Fed. R. Civ. P. 65(b) and Local Rule 231(as  
2 modified in part by Local Rule 230(1));

3 4. Plaintiff's motions at ECF Nos. 63 and 67 are denied as moot.

4 DATED: May 15, 2014

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6 ALLISON CLAIRE  
7 UNITED STATES MAGISTRATE JUDGE

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