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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LARRY GIRALDES,  
  
                                Plaintiff,  
  
                    v.  
  
OANIA, et al.,  
  
                                Defendants.

No. 2:14-cv-726-EFB P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se in action brought under 42 U.S.C. § 1983, has filed a motion for a temporary restraining order. He seeks to prohibit the defendants from limiting his phone privileges in an alleged effort to obstruct plaintiff’s prosecution of this case. ECF No. 20. As discussed below, the motion must be denied.

A temporary restraining order may be issued upon a showing “that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The purpose of such an order is to preserve the status quo and to prevent irreparable harm “just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974). “The standards for granting a temporary restraining order and a preliminary injunction are identical.” *Haw. County Green Party v. Clinton*, 980 F. Supp. 1160, 1164 (D. Haw. 1997); *cf. Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (observing that an

1 analysis of a preliminary injunction is “substantially identical” to an analysis of a temporary  
2 restraining order).

3 A preliminary injunction will not issue unless necessary to prevent threatened injury that  
4 would impair the courts ability to grant effective relief in a pending action. *Sierra On-Line, Inc.*  
5 *v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984); *Gon v. First State Ins. Co.*, 871  
6 F.2d 863 (9th Cir. 1989). A preliminary injunction represents the exercise of a far reaching  
7 power not to be indulged except in a case clearly warranting it. *Dymo Indus. v. Tapeprinter, Inc.*,  
8 326 F.2d 141, 143 (9th Cir. 1964). In order to be entitled to preliminary injunctive relief, a party  
9 must demonstrate “that he is likely to succeed on the merits, that he is likely to suffer irreparable  
10 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an  
11 injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir.  
12 2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). The Ninth Circuit has  
13 also held that the “sliding scale” approach it applies to preliminary injunctions—that is, balancing  
14 the elements of the preliminary injunction test, so that a stronger showing of one element may  
15 offset a weaker showing of another—survives *Winter* and continues to be valid. *Alliance for Wild*  
16 *Rockies v. Cottrell*, 622 F.3d 1045, 1050 (9th Cir. 2010). “In other words, ‘serious questions  
17 going to the merits,’ and a hardship balance that tips sharply toward the plaintiff can support  
18 issuance of an injunction, assuming the other two elements of the *Winter* test are also met.” *Id.*  
19 In cases brought by prisoners involving conditions of confinement, any preliminary injunction  
20 “must be narrowly drawn, extend no further than necessary to correct the harm the court finds  
21 requires preliminary relief, and be the least intrusive means necessary to correct the harm.” 18  
22 U.S.C. § 3626(a)(2).

23 Plaintiff proceeds in this action on a claim that defendants Oania and Casas retaliated  
24 against him by denying him phone privileges. However, plaintiff does not establish that he is  
25 likely to succeed on this claim and a preliminary injunction requiring all seven defendants in this  
26 action to provide plaintiff with phone access must be denied. Plaintiff’s motion is not  
27 accompanied by a sworn declaration or any other evidence establishing a likelihood of success in  
28 this action, or that the injunction sought is necessary to preserve the court’s ability to grant

1 effective relief on his claims and that it is the least intrusive means for doing so. Plaintiff does  
2 not demonstrate that he is entitled to phone privileges. Further, he makes only general allegations  
3 that the restriction on his phone privileges is “obstruct[ing] this case,” and does not demonstrate  
4 that he will suffer irreparable harm without the court’s intervention. Plaintiff also fails to present  
5 evidence establishing that the balance of equities tips in his favor. Nor is there a showing that the  
6 requested injunctive relief is in the public interest. Thus, plaintiff has not made the showing  
7 required to meet his burden as the party moving for injunctive relief, and his request must be  
8 denied.

9 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court randomly assign a  
10 United States District Judge to this action.

11 Further, IT IS HEREBY RECOMMENDED that plaintiff’s motions for injunctive relief  
12 (ECF No. 20) be denied.

13 These findings and recommendations are submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
15 after being served with these findings and recommendations, any party may file written  
16 objections with the court and serve a copy on all parties. Such a document should be captioned  
17 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
18 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
19 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

20 DATED: October 19, 2015.

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22 EDMUND F. BRENNAN  
23 UNITED STATES MAGISTRATE JUDGE  
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