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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EZELL ANDERSON, JR. Doing Business
As, Mom's Choice Meats,

Plaintiff,

v.

UNITED STATES OF AMERICA; KEVIN
CONCANNON, Undersecretary for Food,
Nutrition and Consumer Services;
UNITED STATES DEPARTMENT OF
AGRICULTURE; JOCELYN KEH, Section
Chief, Supplemental Nutrition
Assistance Program, Food and
Nutrition Service, United States
Department of Agriculture, and
their successors in office,

Defendants.

No. 2:14-cv-02307 JAM CKD

**ORDER DENYING PLAINTIFF'S
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER**

This matter is before the Court on Plaintiff Ezell Anderson, Jr.'s ("Plaintiff") Ex Parte Motion for a Temporary Restraining Order ("TRO") (Doc. #2).¹ Defendant United States of America, on behalf of the United States Department of Agriculture

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). No hearing was scheduled.

1 ("Defendant" or "USDA"), filed an opposition (Doc. #9). For the
2 reasons stated below, Plaintiff's application for a TRO is
3 DENIED.

4 OPINION

5 A. Legal Standard

6 Federal Rule of Civil Procedure 65 provides authority to
7 issue either preliminary injunctions or temporary restraining
8 orders. A plaintiff seeking a preliminary injunction must
9 demonstrate that it is "[1] likely to succeed on the merits,
10 [2] that he is likely to suffer irreparable harm in the absence
11 of preliminary relief, [3] that the balance of equities tips in
12 his favor, and [4] that an injunction is in the public interest."
13 Am. Trucking Ass'ns v. City of Los Angeles, 559 F.3d 1046, 1052
14 (9th Cir. 2009) (quoting Winter v. Natural Res. Def. Council, 129
15 S. Ct. 365, 374 (2008)). The requirements for a temporary
16 restraining order are the same. Stuhlbarg Int'l Sales Co. v.
17 John D. Brush & Co., 240 F.3d 832, 839 n. 7 (9th Cir. 2001). A
18 TRO is an emergency measure, intended to preserve the status quo
19 pending a fuller hearing on the injunctive relief requested, and
20 the irreparable harm must therefore be clearly immediate. Fed.
21 R. Civ. Proc. 65(b)(1).

22 B. Analysis

23 Having reviewed Plaintiff's application for a TRO, the Court
24 concludes that Plaintiff has failed to establish a likelihood of
25 success on the merits. Plaintiff alleges that his procedural due
26 process rights have been violated, because "after the initial
27 disqualification Mom's Choice ha[d] to immediately cease
28 transacting EBT transactions without recourse; the regulations

1 prohibit a stay of a disqualification due to trafficking pending
2 both administrative and judicial review; and the rules and
3 regulations bar Mom's Choice from obtaining compensation for the
4 period during a wrongful disqualification." TRO at 2.

5 This argument has been foreclosed by the Ninth Circuit. In
6 Kim v. United States, the Ninth Circuit considered a nearly
7 identical case, in which the USDA had permanently disqualified
8 the plaintiff from participating in the food stamp program,
9 following a charge of trafficking. Kim v. United States, 121
10 F.3d 1269, 1271 (9th Cir. 1997). The Ninth Circuit rejected
11 Plaintiff's procedural due process argument: "Nor were Kim's
12 procedural due process rights infringed. A trial de novo, in
13 which the existence of a violation is examined afresh, and the
14 parties are not limited in their arguments to the contents of the
15 administrative record, satisfies the strictures of procedural due
16 process." Kim, 121 F.3d at 1274. The Ninth Circuit's
17 controlling decision in Kim clearly precludes Plaintiff from
18 establishing a likelihood of success on the merits. For this
19 reason, Plaintiff's application for a TRO is DENIED. This order
20 does not affect Plaintiff's request for a preliminary injunction,
21 and the parties may set a hearing date in compliance with the
22 Local Rules.

23 IT IS SO ORDERED.

24 Dated: October 7, 2014

25 
26 JOHN A. MENDEZ,
27 UNITED STATES DISTRICT JUDGE
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