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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD JOSEPH CRANE,
Plaintiff,
v.
RODRIGUEZ, et al.,
Defendants.

No. 2:15-cv-0208 TLN KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

I. Introduction

Plaintiff is a state prisoner, proceeding without counsel and in forma pauperis. Plaintiff's civil rights action, filed pursuant to 42 U.S.C. § 1983, is proceeding on the second amended complaint against defendants Davey, Rodriguez, Robinette, Weeks, Barton, Probst, and Madrigal, correctional officers, and two parole commissioners, all located at High Desert State Prison ("HDSP"). Plaintiff alleges that these defendants retaliated against him for exercising his rights to access the courts and practice his religion, and failed to protect plaintiff, based on incidents that occurred at HDSP between February 12, 2009, and March 8, 2013. On September 11, 2015, plaintiff filed a notice of change of address indicating that he was transferred to the California State Prison in Lancaster, California ("LAC"). (ECF No. 19.) Pending before the court is plaintiff's request for injunctive relief filed September 14, 2015. As set forth below, plaintiff's motion should be denied.

1 II. Standards

2 The party requesting preliminary injunctive relief must show that “he is likely to succeed
3 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
4 the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v.
5 Natural Resources Defense Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v. Selecky, 586 F.3d
6 1109, 1127 (9th Cir. 2009) (quoting Winter). The propriety of a request for injunctive relief
7 hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean
8 Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

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

16 The principal purpose of preliminary injunctive relief is to preserve the court’s power to
17 render a meaningful decision after a trial on the merits. See 11A Charles Alan Wright & Arthur
18 R. Miller, Federal Practice and Procedure, § 2947 (2d ed. 2010). As noted above, in addition to
19 demonstrating that he will suffer irreparable harm if the court fails to grant the preliminary
20 injunction, plaintiff must show a “fair chance of success on the merits” of his claim. Sports
21 Form, Inc. v. United Press International, Inc., 686 F.2d 750, 754 (9th Cir. 1982) (internal citation
22 omitted). Implicit in this required showing is that the relief awarded is only temporary and there
23 will be a full hearing on the merits of the claims raised in the injunction when the action is
24 brought to trial. In cases brought by prisoners involving conditions of confinement, any
25 preliminary injunction “must be narrowly drawn, extend no further than necessary to correct the
26 harm the court finds requires preliminary relief, and be the least intrusive means necessary to
27 correct the harm.” 18 U.S.C. § 3626(a)(2).

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1 III. Plaintiff's Motion

2 In his motion for injunctive relief, signed August 30, 2015, plaintiff alleges the following:

3 Prison staff at RJD are “deliberately depriving him of his Eighth Amendment rights to
4 protection from violence, and are subjecting him to cruel and unusual punishment because of his
5 litigation in violation of the First Amendment.” (ECF No. 21 at 7.) Officer Cruz refused to
6 deliver plaintiff to an attorney visit on March 27, 2015. (ECF No. 21 at 4.) Officer Mendoza
7 wrote a false 128 (counseling chrono) against plaintiff claiming he was out of bounds, which he
8 claims will be used by the Parole Board to punish him. (ECF No. 21 at 9.) From March 27,
9 2015, to August of 2015, various correctional officers at RJD refused to provide plaintiff with
10 lower bunk cell housing. In July of 2015, plaintiff was placed on loss of privilege (“LOP”) status
11 without a CDCR 115 (rules violation report or “RVR”) or a hearing. Plaintiff claims that
12 defendants “and agents of CDCR [California Department of Corrections and Rehabilitation] are
13 clearly acting in a conspiracy to punish plaintiff without cause for his litigation against CDCR
14 Officials.” (ECF No. 21 at 9.)

15 Plaintiff supports his request for injunctive relief by including incidents that occurred
16 prior to plaintiff’s housing at RJD, such as his claims that while housed at Salinas Valley State
17 Prison (“SVSP”) in 2008, Officers Ambriz and Yee wrote and allegedly backdated a false RVR
18 for conduct conducive to violence (threats against staff) to support his placement in ad seg and in
19 retaliation for plaintiff suing them. (ECF No. 21 at 6, 43, 45-46.) Plaintiff also references claims
20 from the instant action: the parole commissioners relied on the allegedly false August 30, 2003
21 “Smoking in a State Building” CDC 128A (counseling chrono) (ECF No. 21 at 11), and
22 repeatedly referred to an allegedly false 2010 RVR for fighting¹ and a 2010 RVR for misuse of
23 state property (ECF No. 21 at 80), and the 2008 allegedly false RVR, in denying plaintiff parole
24 (ECF No. 21 at 6, 11-12). Plaintiff contends that the “current falsification of the LOP and 128A
25 for allegedly being out-of-bounds proves an ongoing pattern of retaliation with false allegations
26 by CDCR guards.” (ECF No. 21 at 12, 32.)

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28 ¹ Plaintiff did not provide a copy of the Board’s transcript in which they allegedly referred to the
2010 RVR for fighting, and did not provide a copy of such RVR.

1 IV. Discussion

2 No defendants are located at RJD, where plaintiff was housed at the time of the
3 underlying allegations. Thus, the pending motion seeks injunctive relief against individuals who
4 are not named as defendants. This court is unable to issue an order against individuals who are
5 not parties to a suit pending before it. See Zenith Radio Corp. v. Hazeltine Research, Inc., 395
6 U.S. 100, 112 (1969). If plaintiff wishes to challenge the actions of prison staff at RJD, he must
7 file an action in the Southern District of California.

8 In addition, plaintiff has now been transferred to LAC, so any threat of imminent physical
9 harm related to plaintiff's inappropriate cell housing at RJD or imminent harm related to RJD
10 prison staff's alleged retaliation is now moot. See Preiser v. Newkirk, 422 U.S. 395 (1975)
11 (inmate's request for declaratory judgment rendered moot by his transfer to another prison).
12 When an inmate is transferred to another prison and there is no reasonable expectation or
13 demonstrated probability that he will again be subjected to the conditions from which he seeks
14 injunctive relief, his claim for injunctive relief should be dismissed as moot. See Dilley v. Gunn,
15 64 F.3d 1365, 1368-69 (9th Cir. 1995). The possibility that an inmate might be transferred back
16 to the prison where the injury occurred is too speculative to overcome mootness. Id.; see also
17 Wiggins v. Rushen, 760 F.2d 1009 (9th Cir. 1985).

18 Plaintiff's vague claim that CDCR prison staff are engaged in a pattern and practice of
19 retaliating against plaintiff by issuing false charges, 128As, and RVRs, without more, is
20 insufficient to demonstrate that he would be subject to such alleged conditions at LAC. Plaintiff
21 attempts to connect the LOP and 128A issued in 2015 at RJD with a 128A that issued in 2003 at
22 Pleasant Valley State Prison ("PVSP"), and with allegedly false RVRs that issued in 2008 at
23 SVSP for conduct conducive to violence, and in 2010 for misuse of state property at HDSP.
24 These various charges issued over a wide span of years and thus are remote in time as well as
25 geography, involve different prison staff, and are unrelated in subject matter. Plaintiff sets forth
26 no factual allegations demonstrating any connection between the prison staff at RJD and those at
27 PVSP, SVSP or HDSP. Rather, plaintiff simply alleges that there is a "conspiracy" without
28 sufficient factual support. Plaintiff's conclusory claims that all of these RVRs and the 128A were

1 false and issued in retaliation for plaintiff exercising his First Amendment rights, standing alone,
2 fail to demonstrate a pattern or practice. The undersigned finds plaintiff's alleged conspiracy
3 claim too attenuated and vague to support an injunctive relief claim.² If plaintiff challenges the
4 issuance of the LOP or 128A at RJD, he must file an action in the Southern District of California
5 after exhausting his administrative remedies.

6 For all of these reasons, plaintiff's motion for injunctive relief should be denied.

7 V. Request for Extension of Time

8 On September 1, 2015, plaintiff signed a motion for sixty day extension of time to receive
9 his property, and to secure his change of address and legal property in light of his impending
10 transfer to LAC. (ECF No. 20 at 1.) However, plaintiff signed a change of address on September
11 3, 2015 (ECF No. 19). At the time of plaintiff's filing, there were no pending court deadlines that
12 required a response. Thus, plaintiff's motion for extension of time is denied without prejudice.
13 In an abundance of caution, plaintiff will be granted thirty days in which to file objections to
14 these findings and recommendations.

15 VI. Conclusion

16 Accordingly, IT IS HEREBY ORDERED that plaintiff's request for extension of time
17 (ECF No. 20) is denied without prejudice; and

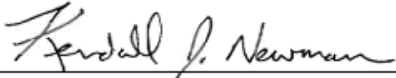
18 IT IS RECOMMENDED that plaintiff's request for injunctive relief (ECF No. 21) be
19 denied.

20 These findings and recommendations are submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within thirty days after
22 being served with these findings and recommendations, any party may file written objections with
23 the court and serve a copy on all parties. Such a document should be captioned "Objections to
24 Magistrate Judge's Findings and Recommendations." Any response to the objections shall be
25 filed and served within fourteen days after service of the objections. The parties are advised that

26 ² Plaintiff's allegations concerning the March 27, 2015 attorney visit are unavailing because he
27 concedes that his attorney cancelled the appointment without plaintiff's knowledge. (ECF No. 21
28 at 3:13-15.) Prison staff cannot be held liable for failing to deliver plaintiff to meet with an
attorney who was not there.

1 failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: September 22, 2015

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6 KENDALL J. NEWMAN
7 UNITED STATES MAGISTRATE JUDGE

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