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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DONNY STEWARD,
Plaintiff,
v.
G. THUMSER, et al.,
Defendants.

No. 2:16-cv-1232 GEB KJN P

ORDER AND FINDINGS &
RECOMMENDATIONS

I. Introduction

Plaintiff is a state prisoner, proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and is proceeding in forma pauperis. This action proceeds on plaintiff’s second amended complaint alleging that defendants Olson, Harrison, Pompey, Tapiz, and Jones, all employed at Vacaville, failed to protect plaintiff and used excessive force, in violation of the Eighth Amendment. (ECF No. 15.) All defendants have filed an answer, and on November 27, 2017, this action was referred to the undersigned’s ADR project, and the case was stayed pending settlement conference, set for March 13, 2018. Despite such stay, on January 8, 2018, plaintiff filed a motion for injunctive relief. Because plaintiff raises serious allegations, the stay is briefly lifted so the court may resolve plaintiff’s motion.

For the reasons set forth below, the undersigned recommends that the motion for injunctive relief be denied.

1 II. Motion for Injunctive Relief

2 A. Legal Standards

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

13 The party requesting preliminary injunctive relief must show that “he is likely to succeed
14 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
15 the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v.
16 Natural Resources Defense Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v. Selecky, 586 F.3d
17 1109, 1127 (9th Cir. 2009) (quoting Winter). The Ninth Circuit has held that, even if the moving
18 party cannot show a likelihood of success on the merits, injunctive relief may issue if “serious
19 questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can
20 support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a
21 likelihood of irreparable injury and that the injunction is in the public interest.” Alliance for the
22 Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011) (internal quotation omitted).

23 Under either formulation of the principles, preliminary injunctive relief should be denied if the
24 probability of success on the merits is low. See Johnson v. California State Bd. of Accountancy,
25 72 F.3d 1427, 1430 (9th Cir. 1995) (“[E]ven if the balance of hardships tips decidedly in favor of
26 the moving party, it must be shown as an irreducible minimum that there is a fair chance of
27 success on the merits.” (quoting Martin v. Int’l Olympic Comm., 740 F.2d 670, 675 (9th Cir.
28 1984)).

1 In addition, as a general rule this court is unable to issue an order against individuals who
2 are not parties to a suit pending before it. Zenith Radio Corp. v. Hazeltine Research, Inc., 395
3 U.S. 100 (1969). A federal district court may issue emergency injunctive relief only if it has
4 personal jurisdiction over the parties and subject matter jurisdiction over the lawsuit. See Murphy
5 Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999) (noting that one “becomes a
6 party officially, and is required to take action in that capacity, only upon service of summons or
7 other authority-asserting measure stating the time within which the party served must appear to
8 defend.”). The court may not attempt to determine the rights of persons not before it. See, e.g.,
9 Hitchman Coal & Coke Co. v. Mitchell, 245 U.S. 229, 234-35 (1916); Zepeda v. INS, 753 F.2d
10 719, 727-28 (9th Cir. 1983); see also Califano v. Yamasaki, 442 U.S. 682, 702 (1979) (injunctive
11 relief must be “narrowly tailored to give only the relief to which plaintiffs are entitled”). Under
12 Federal Rule of Civil Procedure 65(d)(2), an injunction binds only “the parties to the action,”
13 their “officers, agents, servants, employees, and attorneys,” and “other persons who are in active
14 concert or participation.” Fed. R. Civ. P. 65(d)(2)(A)-(C).

15 B. Plaintiff’s Allegations

16 Plaintiff was housed at California Medical Facility, Vacaville (“CMF”), at the time he
17 filed this action, and the underlying incident took place at CMF. Plaintiff is now housed at
18 California State Prison, Sacramento (“CSP-SAC”). In the instant motion, plaintiff does not
19 identify by name the individuals against whom he seeks injunctive relief, but claims “to seek to
20 protect his constitutional rights against the individuals named and involved in the violation of his
21 constitutional rights because of the potential threat and action of these officials and the actions of
22 officials” including this action and a different action in which plaintiff is litigating the taking of
23 his property.¹ (ECF No. 44 at 2.) Plaintiff claims that:

24 1. In the past, plaintiff has been assaulted and mentally abused for complaining about his
25 experience of abuse on appeal and witnessed the abuse of other inmates who grieve officials’
26 misconduct, and is “afraid for [his] life.” (ECF No. 44 at 2.) Plaintiff prays that this restraining

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28 ¹ Plaintiff appears to be challenging a loss of property claim in Steward v. Thumser, No. 2:16-cv-
2701 AC (E.D. Cal.).

1 order will stop the constant abuse, and claims his life is in danger because of what he has seen
2 and his experience. (Id.) He “suffers continuously each time in retaliation for complaining.”
3 (ECF No. 44 at 6.)

4 2. Plaintiff’s housing unit has been without CDCR22-forms for the past four months,
5 which he alleges prevents inmates from filing an administrative appeal.

6 3. When there is a “riot of major proportions,” officers from other CDCR facilities are
7 called to assist, and plaintiff would get some relief if defendants were ordered to “steer clear” of
8 plaintiff. (ECF No. 44 at 3.) Plaintiff suffers partial vision loss and requires an inhaler, so that
9 the memories of the underlying incident involving the blinding by pepper spray and being pushed
10 under hot water are “forever scratched in [his] mind.” (Id.)

11 4. Plaintiff has suffered property loss² and assault while sitting on an inmate designated
12 bench, and for standing too slow when ordered to get up and cuff up, despite explaining he had a
13 torn meniscus. (ECF No. 44 at 5.)

14 5. Plaintiff claims that all of his appliances have been lost, as well as “a great deal of his
15 legal documents.” (ECF No. 44 at 6.)

16 In conclusion, plaintiff contends that because defendants subjected plaintiff to an assault,
17 he must be granted injunctive relief.

18 C. Discussion

19 While the court is sympathetic to plaintiff’s difficulties in prison, the undersigned
20 recommends that the motion be denied. The only identifiable and requested relief is a request for
21 an order prohibiting defendants Olson, Harrison, Pompey, Tapiz, and Jones from approaching
22 plaintiff if they are assigned to assist in a future riot of major proportions at CSP-SAC. Such
23 request is too speculative because he has not demonstrated that it is probable CSP-SAC will have
24 another riot of major proportions, or that the defendants named herein would specifically be
25 called from Vacaville to assist in Represa, or that plaintiff might be involved in such a riot. To
26 the extent plaintiff argues that defendants may subject plaintiff to the same excessive force

27 ² It is unclear whether plaintiff included or intends to include a retaliation claim in case No.
28 2:16-cv-2701 AC, because plaintiff’s motion to amend is pending. See Fed. R. Civ. P. 15(a).

1 alleged herein while plaintiff is now housed at CSP-SAC, such argument is unavailing. When an
2 inmate is transferred to another prison, and there is no reasonable expectation or demonstrated
3 probability that he will again be subjected to the prison conditions from which he seeks injunctive
4 relief, the claims for injunctive relief should be dismissed as moot. Dilley v. Gunn, 64 F.3d 1365,
5 1368-69 (9th Cir. 1995); see also Alvarez v. Hill, 667 F.3d 1061, 1064 (9th Cir. 2012) (same for
6 claims for declaratory relief). A claim that an inmate who has been transferred and might be
7 retransferred to the facility where the injury occurred is too speculative to overcome mootness.
8 See Dilley, 64 F.3d at 1369; Wiggins v. Rushen, 760 F.2d 1009, 1010-11 (9th Cir. 1985). Just as
9 it is too speculative that any of the defendants named herein may be called to assist in a riot at
10 CSP-SAC, it is too speculative that plaintiff may be transferred back to Vacaville.

11 The undersigned acknowledges that plaintiff believes his life is in danger, but plaintiff has
12 not supported such claim with specific and articulable facts demonstrating a credible or imminent
13 threat to his safety. To the extent plaintiff seeks an injunction governing unidentified individuals
14 at CSP-SAC, plaintiff has failed to meet the relevant standard for such an injunction to issue. As
15 noted above, a plaintiff seeking a preliminary injunction must establish, among other things, that
16 he is likely to suffer irreparable harm in the absence of preliminary relief. Winter, 555 U.S. at 20.
17 Here, plaintiff has not identified any individuals at CSP-SAC in the underlying operative
18 complaint, and has not provided specific allegations suggesting he faces real, immediate, or
19 irreparable harm from an individual at CSP-SAC in the instant motion. In short, plaintiff has
20 failed to demonstrate he is currently being subjected to a violation of his rights. Thus, there does
21 not appear to be any harm, much less irreparable harm, that plaintiff will suffer if his request for
22 injunctive relief is denied.

23 Plaintiff's remaining allegations are too vague and conclusory, both as to time and as to
24 location of the alleged violations, to support a claim for injunctive relief, and also appear
25 unrelated to the underlying incidents. Plaintiff cannot demonstrate a likely success on the merits
26 if his claims for injunctive relief are wholly unrelated to the incident that occurred at CMF and
27 involved defendants Olson, Harrison, Pompey, Tapiz, and Jones. Such new allegations are not at
28 issue in plaintiff's second amended complaint, and therefore will not receive a trial on the merits.

1 For all of these reasons, plaintiff's motion should be denied without prejudice.


2 Conclusion

3 Accordingly, IT IS HEREBY ORDERED that the stay is temporarily lifted, solely for the
4 purpose of resolving plaintiff's motion for injunctive relief;³ once the district court issues its order
5 addressing these findings and recommendations, the stay is re-implemented until March 13, 2018.

6 IT IS RECOMMENDED that plaintiff's motion for injunctive relief (ECF No. 44) be
7 denied without prejudice.

8 These findings and recommendations are submitted to the United States District Judge
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
10 after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
13 objections shall be filed and served within fourteen days after service of the objections. The
14 parties are advised that failure to file objections within the specified time may waive the right to
15 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 Dated: January 11, 2018

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19 KENDALL J. NEWMAN
20 UNITED STATES MAGISTRATE JUDGE

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27 ³ In other words, no additional filings by the parties are authorized unless the filing pertains to
28 plaintiff's motion for injunctive relief, the instant findings and recommendations, and the district
court's order addressing the instant findings and recommendations.