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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

J.G., a minor, by and through his mother  
and Guardian Ad Litem, BRIDGETT M.  
MCCULLOUGH, J.L., a minor, by and  
through his Guardian Ad Litem,  
ANTOINETTE EDMONDS, and EZELL  
ANDERSON, JR. d/b/a Mom's Choice  
Meats, and Put Meat On The Table  
(PMOTT),

Plaintiffs,

v.

UNITED STATES OF AMERICA; TOM  
VILSACK, Secretary, United States  
Department of Agriculture; KEVIN  
CONCANNNO, 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. 2:16-cv-1476-KJM-EFB PS

FINDINGS AND RECOMMENDATIONS

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1 Ezell Anderson, one of the named plaintiffs in this action, moves for a temporary  
2 restraining order. ECF No. 4.<sup>1</sup> For the following reasons, it is recommended that the motion be  
3 denied.

4 A. Legal Standard

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

15 A preliminary injunction will not issue unless necessary to prevent threatened injury that  
16 would impair the court’s ability to grant effective relief in a pending action. *Sierra On-Line, Inc.*  
17 *v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984); *Gon v. First State Ins. Co.*, 871  
18 F.2d 863 (9th Cir. 1964). Such an order represents the exercise of a far reaching power that  
19 should not be used unless the circumstances clearly warrant it. *Dymo Indus. V. Tapeprinter, Inc.*,  
20 326 F.2d 141, 143 (9th Cir. 1964).

21 To establish the need for preliminary injunctive relief, a party must demonstrate “that he is  
22 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
23 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the  
24 public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter v.*  
25 *Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). In the Ninth Circuit, courts employ a “sliding  
26 scale” approach to analyzing requests for preliminary injunctions. *Alliance for the Wild Rockies*

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27 <sup>1</sup> This case, in which plaintiff Anderson is proceeding *in propria persona*, was referred to  
28 the undersigned under Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1).

1 v. *Cottrell*, 622 F.3d 1045, 1050 (9th Cir. 2010). Under that approach, courts balance the  
2 elements of the preliminary injunction test, so that a stronger showing of one element may offset  
3 a weaker showing of another. *Id.* The Ninth Circuit has held that this approach continued to be  
4 valid after *Winters*. *Id.* Thus, “‘serious questions going to the merits,’ and a hardship balance  
5 that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two  
6 elements of the *Winter* test are also met.” *Id.*

7 A preliminary injunction can be either prohibitory or mandatory. *Marlyn Nutraceuticals,*  
8 *Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878 (9th Cir. 2009). A prohibitory injunction  
9 prohibits a party from taking action and thereby preserves the status quo pending a determination  
10 on the merits of the case. *Id.* A mandatory injunction, on the other hand, requires a party to take  
11 action and thus “goes well beyond simply maintaining the status quo pendente lite.” *Id.* at 879  
12 (internal quotation marks omitted). Mandatory injunctions are “particularly disfavored” and may  
13 not be granted “unless extreme or very serious damage will result.” *Id.* Further, a court should  
14 not enter a mandatory injunction in doubtful cases or where the injury complained of is  
15 compensable by monetary damages. *Id.*

16 B. Discussion

17 Anderson seeks to restrain enforcement of a decision by the United States Department of  
18 Agriculture, Food and Nutrition Assistance Program, permanently disqualifying his business,  
19 Mom’s Choice Meats, from participation in the Supplemental Nutrition Assistance Program  
20 (“SNAP”)<sup>2</sup> based on a finding that Mom’s Choice Meats was trafficking in food stamp benefits  
21 and has failed to establish and implement an effective compliance policy and program to prevent  
22 such violations.<sup>3</sup> ECF No. 4.; *see* ECF No. 1 at 113-114 (Ex. O). He alleges in his complaint that  
23 plaintiffs J.G. and J.L are members of a family receiving assistance through SNAP and that they  
24 are being harmed by the exclusion of Anderson from participation in the program. ECF No. 1 at  
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26 <sup>2</sup> SNAP was established under the Food Stamp Act and is operated by the Food &  
27 Nutrition Service (FNS) of the United States Department of Agriculture. 7 U.S.C. §§ 2011-2036.

28 <sup>3</sup> Anderson is the owner of Mom’s Choice Meats, which was authorized to participate in  
the Supplemental Nutrition Assistance Program as a meat specialty store. ECF No. 1 at 8, 63.

1 4. He asserts that through his store he has created a program entitled Put Meat on the Table  
2 (“PMOTT”). *Id.* at 2, 65. As he explains it, the purpose of his PMOTT program is to provide a  
3 way for SNAP participants who had exhausted their monthly benefits to still be able to purchase  
4 meat prior to receiving their next benefit distribution. *Id.* at 1, 55-57 (Ex. A).

5 Anderson alleges that his PMOTT’s services are critical to the minor plaintiffs, “but  
6 because of Defendants’ unprecedented, and unlawful, action against Mom’s Choice, PMOTT  
7 services ceased being delivered and available effective, September 10, 2014.” *Id.* at 5. On that  
8 date, Mom’s Choice Meat was permanently disqualified from participating in SNAP based on a  
9 charge of trafficking (exchanging cash for food stamp benefits). *Id.* at 13. Anderson argues that  
10 the government should have known that the disqualification “would bring the permanent end to  
11 PMOTT’s monthly relief to Plaintiffs Children’s household, but made no effort to notify  
12 Plaintiffs Children’s household of the impending calamity.” *Id.*

13 Although the complaint references a variety of claims,<sup>4</sup> his motion for a temporary  
14 restraining order is focused primarily on his due process claim. He argues that his due process  
15 rights were violated because SNAP’s statutory and regulatory framework do not permit a stay of  
16 the decision to permanently disqualify his participation in SNAP pending judicial review. ECF  
17 No. 4 at 15. Anderson now seeks an injunction staying the decision to disqualify his participation  
18 in SNAP pending this litigation.

19 Anderson previously raised this argument in a prior motion for a temporary restraining  
20 order he filed in a separate case that is pending before this court. *See Anderson v. United States*  
21 *of America*, 2:14-cv-2307-JAM-CKD-PS, ECF No. 2 at 2. As Anderson was previously informed  
22 by the decision entered in that case, his argument is foreclosed by the U.S. Court of Appeals for  
23 the Ninth Circuit’s holding in *Kim v. United States*, 121 F.3d 1269 (9th Cir. 1997). *See*  
24 *Anderson*, 2:14-cv-2307-JAM-CKD-PA, ECF No. 10. In *Kim*, the Ninth Circuit rejected the  
25 plaintiff’s contention that the USDA violated his due process rights by permanently disqualifying  
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27 <sup>4</sup> Anderson’s complaint purports to allege the following claims: (1) violation of plaintiffs’  
28 due process; (2) intentional infliction of emotional distress; (3) “arbitrary and capricious”; (4)  
corruption; (5) discrimination – Race and Color; (6) and “irreparable injuries.” *Id.* at 23-45.

1 him from participation in the food stamp program following a charge of trafficking. 121 F.3d at  
2 1274. The court explained that “[a] trial de novo, in which the existence of a violation is  
3 examined afresh, and the parties are not limited in their arguments to the contents of the  
4 administrative record, satisfies the strictures of procedural due process.” *Id.* Thus, Ninth Circuit  
5 precedent is dispositive of Anderson’s due process contention here and he fails to show a  
6 likelihood of success on the merits.

7         Moreover, Anderson is unlikely to succeed on any of his other claims. All of his claims  
8 are predicated on his contention that the government wrongfully disqualified his participation in  
9 SNAP, which is precisely the challenge he advances in *Anderson v. United States of America*,  
10 2:14-cv-2307-JAM-CKD-PS. In that case, Magistrate Judge Delaney recommended that  
11 summary judgment be granted in the government’s favor, finding no genuine dispute that  
12 permanent disqualification was appropriate.<sup>5</sup> In doing so she relied on the Ninth Circuit’s ruling  
13 in *Kim*, which is also controlling here. *See Kim*, 121 F.3d at 1274 (finding that a store owner  
14 could be “permanently disqualified from the food stamp program when, unknown to him, one of  
15 his employees trafficked in food stamps.”). Thus, Anderson is unlikely to succeed on the merits  
16 of this case.

17         Accordingly, it is hereby RECOMMENDED that Anderson’s motion for a temporary  
18 restraining order be denied.

19         These findings and recommendations are submitted to the United States District Judge  
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
21 after being served with these findings and recommendations, any party may file written  
22 objections with the court and serve a copy on all parties. Such a document should be captioned  
23 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections

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28 <sup>5</sup> Those findings and recommendation are pending before Judge Mendez.

1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 DATED: December 21, 2016.

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5 EDMUND F. BRENNAN  
6 UNITED STATES MAGISTRATE JUDGE  
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