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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ETUATE SEKONA,
Plaintiff,
v.
JOE A. LIZARRAGA, et al.,
Defendants.

No. 2:17-cv-0346-KJM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has filed two motions seeking a temporary restraining order, along with supporting declarations and exhibits. ECF Nos. 41 & 42. For the reasons stated below, the motions must be denied.

Plaintiff filed his motions for the purpose of securing single cell housing. ECF No. 41 at 2. He states that on November 17, 2018, at Kern Valley State Prison, his cellmate assaulted him – punching and kicking him until he was unconscious. *Id.* at 6, 11. Plaintiff states there was “blood in [his] brain” and he spent two days in the hospital. *Id.* Plaintiff was given a new cellmate upon his return from the hospital. *Id.* Plaintiff now seeks an order directing that he be provided a single cell because he still feels unsafe, even with this new cellmate, with whom he has previously shared a cell. *Id.* at 13. Additionally, plaintiff says that his current cellmate plays his television loudly all day and night, has a pet mouse that runs around the cell, and makes

1 “wine” in the cell. *Id.* Allegedly, the cellmate has threatened to hurt or kill plaintiff if plaintiff
2 complains. *Id.* Plaintiff has complained, however. When they previously shared a cell, plaintiff
3 reported his misconduct and got a new cellmate. *Id.* at 7-8, 13-14.

4 A temporary restraining order may be issued upon a showing of “specific facts . . . that
5 immediate and irreparable injury, loss, or damage will result to the movant before the adverse
6 party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A); *Haw. County Green Party v.*
7 *Clinton*, 980 F. Supp. 1160, 1164 (D. Haw. 1997)(“The standards for granting a
8 temporary restraining order and a preliminary injunction are identical.”); *cf. Stuhlberg Int’l Sales*
9 *Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (observing that an analysis of
10 a preliminary injunction is “substantially identical” to an analysis of a temporary restraining
11 order). The purpose of the order is to preserve the status quo and to prevent irreparable harm
12 “just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v.*
13 *Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974). An order requiring that plaintiff be single
14 celled would change rather than preserve the status quo. Moreover, plaintiff no longer shares a
15 cell with the inmate who assaulted him and he has previously reported the misconduct of his
16 current cellmate, without incident. Because plaintiff has not alleged “specific facts” showing that
17 he is threatened with immediate and irreparable injury, his motions for a temporary restraining
18 order must be denied.

19 More fundamentally, plaintiff’s requested relief appears to have no nexus to the claims
20 being litigated in this action. Plaintiff is not entitled to a preliminary injunction absent a showing
21 “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
22 absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction
23 is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing
24 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). This action proceeds on claims that
25 arose at Mule Creek State Prison. ECF Nos. 18 & 21. Plaintiff’s motions concern conduct that
26 occurred at Kern Valley State Prison, and thus, fail to demonstrate either a likelihood of success
27 on the merits or a serious question on the merits. Generally, such allegations must be pursued
28 through the prison administrative process and then litigated in a separate action. *See McKinney v.*

1 *Carey*, 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (per curiam) and *Rhodes v. Robinson*, 621 F.3d
2 1002, 1004-07 (9th Cir. 2010) (together holding that claims must be exhausted prior to the filing
3 of the original or supplemental complaint); *Jones v. Felker*, No. CIV S-08-0096 KJM EFB P,
4 2011 U.S. Dist. LEXIS 13730, at *11-15, 2011 WL 533755 (E.D. Cal. Feb. 11, 2011).

5 Accordingly, it is RECOMMENDED that plaintiff's motions for a temporary restraining
6 order (ECF Nos. 41 & 42) be denied without prejudice.

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

14 DATED: February 8, 2019.

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16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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