

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RHONDA IREDIA-ORTEGA,  
Plaintiff,

v.

BAKER RESIDENTIAL ACADEMIC  
PROGRAM UNIVERSITY OF  
CALIFORNIA, et al.,  
Defendant.

No. 2:17-cv-0843 MCE CKD PS

FINDINGS AND RECOMMENDATIONS

Plaintiff has filed a motion for a temporary restraining order. ECF No. 5. The standards governing the issuance of temporary restraining orders are "substantially identical" to those governing the issuance of preliminary injunctions. Stuhlbarg Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc., 240 F.3d 832, 839 n. 7 (9th Cir.2001). Therefore, "[a] plaintiff seeking a [TRO] must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Am. Trucking Ass'n, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir.2009) (quoting Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7 (2008)). "A preliminary injunction is appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." Alliance for the Wild Rockies v. Cottrell, 622 F.3d 1045, 1049-50 (9th Cir.

1 2010) (quoting Lands Council v. McNair, 537 F.3d 981, 97 (9th Cir. 2008) (en banc)). A TRO is  
2 "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is  
3 entitled to such relief." Winter, 129 S. Ct. at 376.

4 The Ninth Circuit has reiterated that under either formulation of the principles, if the  
5 probability of success on the merits is low, preliminary injunctive relief should be denied:  
6 Martin explicitly teaches that "[u]nder this last part of the alternative test, even if the balance of  
7 hardships tips decidedly in favor of the moving party, it must be shown as an irreducible  
8 minimum that there is a fair chance of success on the merits." Johnson v. California State Bd. of  
9 Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995) (quoting Martin v. International Olympic  
10 Comm., 740 F.2d 670, 675 (9th Cir. 1984)).

11 Plaintiff has failed to file the documents required under Local Rule 231(c). In addition, by  
12 order filed April 26, 2017, plaintiff's complaint was dismissed with leave to amend. ECF No. 4.  
13 In that order, the court found that the allegations in plaintiff's complaint were so vague and  
14 conclusory that the court was unable to determine whether the current action is frivolous or fails  
15 to state a claim for relief. Under these circumstances, the court cannot assess the likelihood of  
16 plaintiff prevailing on the merits. Plaintiff has failed to meet the standards for issuance of a  
17 temporary restraining order.

18 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's motion for temporary  
19 restraining order (ECF No. 5) be 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 fourteen days  
22 after being served with these findings and recommendations, any party may file written  
23 objections with the court and serve a copy on all parties. Such a document should be captioned

24 /////

25 /////

26 /////

27 /////

28 /////

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
2 within the specified time may waive the right to appeal the District Court’s order. Martinez v.  
3 Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: May 4, 2017



---

CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

7 4 iredia0843.tro

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28