

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

MORRIS MESTER,
Plaintiff,
v.
N. MALAKKLA, et al.,
Defendants.

No. 2:17-cv-1781 MCE AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. In conjunction with his complaint, plaintiff filed a motion for preliminary injunction which sought an order directing defendants to “provide relief of his pain [and] suffering” and to follow the course of treatment laid out by orthopedic surgeon John Casey. ECF No. 5 at 3. On August 30, 2017, the court recommended that plaintiff’s motion for preliminary injunction be denied without prejudice. ECF No. 6 at 2-3. Plaintiff filed objections to that recommendation. ECF No. 11. Prior to filing those objections, however, he consented to the magistrate judge jurisdiction. ECF No. 10. Given that no defendant has yet been served, the court finds it appropriate to vacate its findings and recommendations issued on August 30 (ECF No. 6) and to adjudicate the preliminary injunction by order. See Wilhelm v. Rotman, 680 F.3d 1113, 1119-21 (9th Cir. 2012) (holding that magistrate judge had jurisdiction to dismiss a prisoner’s § 1983 action after prisoner consented to magistrate judge jurisdiction and no

1 defendant had yet been served). The court will also vacate its order directing the Clerk of Court
2 to assign a district judge to this case. After reviewing plaintiff's objections and for the reasons
3 stated below, the court will deny plaintiff's preliminary injunction without prejudice.

4 I. Legal Standards

5 "A preliminary injunction is an 'extraordinary and drastic remedy' . . . it is never awarded
6 as of right." Munaf v. Geren, 553 U.S. 674, 689-90 (2008) (citing 11A C. Wright, A. Miller, &
7 M. Kane, Federal Practice and Procedure § 2948, p. 129 (2d ed.1995) and Yakus v. United States,
8 321 U.S. 414, 440 (1944)). "The sole purpose of a preliminary injunction is to "preserve the
9 status quo ante litem pending a determination of the action on the merits." Sierra Forest Legacy
10 v. Rey, 577 F.3d 1015, 1023 (9th Cir. 2009) (citing L.A. Memorial Coliseum Comm'n v. NFL,
11 634 F.2d 1197, 1200 (9th Cir.1980)).

12 In evaluating the merits of a motion for preliminary injunctive relief, the court considers
13 whether the movant has shown that "he is likely to succeed on the merits, that he is likely to
14 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
15 favor, and that an injunction is in the public interest." Winter v. Natural Resources Defense
16 Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009)
17 (quoting Winter). The propriety of a request for injunctive relief hinges on a significant threat of
18 irreparable injury that must be imminent in nature. Caribbean Marine Serv. Co. v. Baldrige, 844
19 F.2d 668, 674 (9th Cir. 1988). A preliminary injunction is appropriate when a plaintiff
20 demonstrates . . . "serious questions going to the merits and a hardship balance that tips sharply
21 toward the plaintiff, . . . assuming the other two elements of the *Winter* test are also met."
22 Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-32 (9th Cir. 2011). An injunction
23 against individuals who are not parties to the action is strongly disfavored. Zenith Radio Corp. v.
24 Hazeltine Research, Inc., 395 U.S. 100 (1969).

25 Additionally, in cases brought by prisoners involving conditions of their confinement, any
26 preliminary injunction "must be narrowly drawn, extend no further than necessary to correct the
27 harm the court finds requires preliminary relief, and be the least intrusive means necessary to
28 correct the harm." 18 U.S.C. § 3626(a)(2).

1 II. Analysis

2 The court concludes that plaintiff’s motion for preliminary injunction should be denied.
3 Notice to the adverse party (or parties) is required before a motion for preliminary injunction may
4 be granted. See Fed. R. Civ. P. 65(a)(1); see also Granny Goose Foods, Inc. v. Teamsters Local
5 No. 70, 415 U.S. 423, 434 n.7 (1974). (“The notice required by Rule 65(a) before a preliminary
6 injunction can issue implies a hearing in which the defendant is given a fair opportunity to oppose
7 the application and to prepare for such opposition.”). As noted in its previous order (ECF No. 6),
8 service is not yet appropriate for any defendant in this case. Thus, plaintiff’s motion for
9 preliminary injunction is premature. Rather than allow the motion to sit pending until service is
10 accomplished, the court will dismiss the motion without prejudice to renewal at a later date.

11 While a preliminary injunction pursuant to Rule 65(a) requires notice, a temporary
12 restraining order may be granted without notice to the adverse party or its counsel where: (1)
13 specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable
14 injury, loss, or damage will result to the movant before the adverse party can be heard in
15 opposition; and (2) the movant’s certifies in writing any efforts made to give notice and the
16 reasons why it should not be required. See Fed. R. Civ. P. 65(b). Although plaintiff has
17 explicitly categorized his pending motion as one for preliminary injunction under Rule 65(a)
18 (ECF No. 5 at 1), in light of his pro se status the court will also consider the propriety of a
19 temporary restraining order. The Winter factors identified above apply with equal measure to the
20 issuance of a temporary restraining order. See Gonzalez v. Wells Fargo Bank, No. 5:12-cv-
21 03842, 2012 U.S. Dist. LEXIS 118355, 2012 WL 3627820, at *1 (N.D. Cal. Aug. 21, 2012)
22 (“The standard for issuing a TRO is the same as that for the issuance of preliminary injunction.”).

23 The court concludes that issuance of a temporary restraining order is also inappropriate at
24 this time. First, plaintiff has failed to establish that he will suffer irreparable harm if immediate
25 injunctive relief does not issue. Although he has alleged various shortcomings in his medical
26 care, there is no medical evidence before the court which indicates that the failure to immediately
27 implement Dr. Casey’s treatment plan will irreparably damage plaintiff’s health. The medical
28 records attached to plaintiff’s objections, while describing the rationale for right and left “total hip

1 arthroplasty” (ECF No. 11 at 11-12), do not evince any medical urgency or describe the
2 consequences of failing to quickly undertake the recommended procedures. Next, defendants
3 have not yet been served or required to respond to plaintiff’s allegations and, consequently, the
4 court is unable to determine whether plaintiff is likely to succeed on the merits of his claims.
5 Finally, the court finds that neither the balance of equities nor the public interest weigh in favor of
6 granting injunctive relief at this early stage. Courts should intrude into prison administration only
7 as far as necessary to protect inmates’ constitutional rights. See Bruce v. Ylst, 351 F.3d 1283,
8 1290 (9th Cir. 2003). And mandatory injunctions – injunctions which compel a party to act as
9 opposed to refrain from acting – are disfavored. See Marlyn Nutraceuticals, Inc. v. Mucos
10 Pharma GmbH & Co., 571 F.3d 873, 879 (9th Cir. 2009) (quoting Anderson v. United States, 612
11 F.2d 1112, 1114 (9th Cir. 1980)). Here, plaintiff would have the court undertake a significant
12 intrusion into prison administration by ordering medical staff to undertake a specific course of
13 treatment. The severity of the proposed intrusion is compounded by the fact that defendants have
14 not had a chance to be heard on this issue. In light of the circumstances, the court concludes that
15 a temporary restraining order would be appropriate only in the face of overwhelming medical
16 evidence demonstrating the immediate necessity of Casey’s proposed treatment. Plaintiff has not
17 provided such evidence and his motion will be denied.

18 III. Conclusion

19 In light of the foregoing, it is HEREBY ORDERED that:

- 20 1. The findings and recommendations regarding plaintiff’s preliminary injunction
21 submitted on August 30, 2017 (ECF No. 6) are VACATED;
- 22 2. In light of plaintiff’s consent to magistrate judge jurisdiction (ECF No. 10), the
23 court’s order that a district judge be assigned to this case (ECF No. 6) is also VACATED;
- 24 3. The Clerk of Court shall update the docket to reflect that this case is assigned to
25 the undersigned; and

26 ///

27 ///

28 ///

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

4. Plaintiff's motion for preliminary injunction (ECF No. 5) is DENIED without prejudice.

IT IS SO ORDERED.

DATED: September 14, 2017



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE