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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY MINER,

Plaintiff,

v.

W. DAVID SMILEY, et al.,

Defendants.

No. 2:17-cv-1896-MCE-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se with this civil rights action under 42 U.S.C. § 1983, moves for a temporary restraining order and/or preliminary injunction. ECF No. 43. Plaintiff states that he complained about not having possession of his property and now fears retaliation. He seeks an order prohibiting his transfer to another institution until he is in possession of his property. For the reasons that follow, plaintiff's request should be denied.

A temporary restraining order may be issued upon a showing "that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). The purpose of such an order is to preserve the status quo and to prevent irreparable harm "just so long as is necessary to hold a hearing, and no longer." *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974). "The standards for granting a temporary restraining order and a preliminary injunction are identical." *Haw. County Green Party v. Clinton*, 980 F. Supp. 1160, 1164 (D. Haw. 1997); *cf.*

1 *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)
2 (observing that an analysis of a preliminary injunction is “substantially identical” to an analysis of
3 a temporary restraining order).

4 A preliminary injunction will not issue unless necessary to prevent threatened injury that
5 would impair the court’s ability to grant effective relief in a pending action. *Sierra On-Line, Inc.*
6 *v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984); *Gon v. First State Ins. Co.*, 871
7 F.2d 863 (9th Cir. 1989). A preliminary injunction represents the exercise of a far reaching
8 power not to be indulged except in a case clearly warranting it. *Dymo Indus. v. Tapeprinter, Inc.*,
9 326 F.2d 141, 143 (9th Cir. 1964). To be entitled to preliminary injunctive relief, a party must
10 demonstrate “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm
11 in the absence of preliminary relief, that the balance of equities tips in his favor, and that an
12 injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir.
13 2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). The Ninth Circuit has
14 also held that the “sliding scale” approach it applies to preliminary injunctions—that is, balancing
15 the elements of the preliminary injunction test, so that a stronger showing of one element may
16 offset a weaker showing of another—survives *Winter* and continues to be valid. *Alliance for the*
17 *Wild Rockies v. Cottrell*, 622 F.3d 1045, 1050 (9th Cir. 2010). “In other words, ‘serious
18 questions going to the merits,’ and a hardship balance that tips sharply toward the plaintiff can
19 support issuance of an injunction, assuming the other two elements of the *Winter* test are also
20 met.” *Id.* In cases brought by prisoners involving conditions of confinement, any preliminary
21 injunction “must be narrowly drawn, extend no further than necessary to correct the harm the
22 court finds requires preliminary relief, and be the least intrusive means necessary to correct the
23 harm.” 18 U.S.C. § 3626(a)(2).

24 Plaintiff fails to meet that standard. This action proceeds on claims against defendants
25 employed at Mule Creek State Prison. Plaintiff is now housed at the California Institute for Men,
26 and his current request involves neither Mule Creek State Prison nor the named defendants.

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1 Because plaintiff's motion addresses conduct that is not a subject of this civil action, it does not
2 demonstrate either a likelihood of success or a serious question going to the merits of his
3 complaint.¹ Also significant is that plaintiff fails to show that he will suffer imminent and
4 irreparable harm in the absence of the requested relief. Rather, his vague fear of "retaliation" is
5 speculative, and his motion fails to show how being transferred before receipt of his property will
6 cause irreparable injury. He has not shown that any disruption to his ability to access his property
7 would be permanent rather than temporary. Nor has he shown that procedures are not available to
8 obtain what he needs if the property is temporarily unavailable.

9 For these reasons, plaintiff's motion for a temporary restraining order and/or preliminary
10 injunction must be denied.

11 Accordingly, it is hereby RECOMMENDED that plaintiff's motion for a temporary
12 restraining order and/or preliminary injunction (ECF No. 43) be denied.

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

20 DATED: July 2, 2020.

21 
22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE

24
25 ¹ Generally, such unrelated allegations must be pursued through the prison administrative
26 process and then litigated in a separate action. See *McKinney v. Carey*, 311 F.3d 1198, 1199-
27 1201 (9th Cir. 2002) (per curiam) and *Rhodes v. Robinson*, 621 F.3d 1002, 1004-07 (9th Cir.
28 2010) (together holding that claims must be exhausted prior to the filing of the original or
supplemental complaint); *Jones v. Felker*, No. CIV S-08-0096 KJM EFB P, 2011 U.S. Dist.
LEXIS 13730, at *11-15 (E.D. Cal. Feb. 11, 2011).