

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3 SHANNON RILEY,

No. C 10-2088 CW (PR)

4 Plaintiff,

ORDER DENYING PLAINTIFF'S
MOTION FOR A PRELIMINARY
INJUNCTION

5 v.

6 CORRECTIONAL OFFICERS S. ROACH
AND E. MORRIS,

(Docket nos. 3, 5)

7 Defendants.
8 _____/

9 INTRODUCTION

10 On May 17, 2010, Plaintiff Shannon Riley, a state prisoner
11 incarcerated at Salinas Valley State Prison (SVSP), filed a civil
12 rights action pursuant to 42 U.S.C. § 1983 alleging a retaliation
13 claim against Defendants SVSP Correctional Officers S. Roach and E.
14 Morris.

15 On that same date, Plaintiff also filed a motion for a
16 preliminary injunction (docket no. 3) that would prohibit Defendant
17 Roach from issuing any "false" rule violation reports against him.
18 (Pl.'s May 17, 2010 Mot. at 5.) On June 16, 2010, Plaintiff filed
19 another motion entitled, "Ex Parte Motion/Injunction" (docket no.
20 5) in which he asks "that his request for a temporary injunction be
21 ruled on." (Pl.'s June 16, 2010 Mot. at 1.) Plaintiff appears to
22 refer to his original May 17, 2010 motion for a preliminary
23 injunction in his "Ex Parte Motion/Injunction."

24 In an Order dated December 8, 2010, the Court found that
25 Plaintiff's allegations presented a cognizable retaliation claim
26 against Defendants and ordered service on them. The Court also
27 directed Defendants to respond to Plaintiff's motion for a
28 preliminary injunction.

1 On February 8, 2011, Defendants filed an answer to the
2 complaint as well as their response to the motion for a preliminary
3 injunction.

4 For the reasons outlined below, the Court DENIES Plaintiff's
5 motion for a preliminary injunction.

6 DISCUSSION

7 The facts which Plaintiff relies upon to support his motion
8 for a preliminary injunction are those alleged in his complaint and
9 summarized in the Court's order of service:

10 In Plaintiff's original complaint dated April 13,
11 2010, he states that Defendant SVSP Correctional Officer
12 S. Roach "has continued to retaliate and harass [him] by
13 filing false rule violation reports, refusing to release
14 [him] for work and ultimately causing [him] to seek a job
15 change [due] to the continuous harassment and
16 retaliation." (Compl. at 3.) In Plaintiff's new
17 complaint, he specifies that the alleged retaliation took
18 place in 2009, after he filed a grievance against SVSP
19 Correctional Officer Vasquez, one of Defendant Roach's
20 "buddies." (Apr. 25, 2010 Compl., Ex. E at 101.)
21 Plaintiff claims that on July 6, 2009, Defendant Roach
22 retaliated against him by "refus[ing] to release [him]
23 for his work assignment." (Id. at 99.) Plaintiff claims
24 that he was not allowed to "perform his work assignment"
25 from July 7, 2009 through July 9, 2009. (Id. at 101.)
26 Plaintiff claims that on July 8, 2009, he confronted
27 Defendant Roach "about his reason for refusing to release
28 [him] for his work assignment," and Defendant Roach
"responded by stating he don't [sic] like I/M paper
pushers specifically when I/M's file against one of his
buddies C/O Roach was referring to the a [sic]
complaint [Plaintiff] filed against C/O Vasquez." (Id.)
Plaintiff also identifies the staff member "who signs the
time cards" as Defendant SVSP Correctional Officer
Morris, and claims Defendant Morris "'falsely documented'
[his] time card as [Plaintiff] was allowed out to perform
his duties." (Id. at 100-101.)

Plaintiff filed an administrative grievance relating
to his retaliation claim, and his allegations were
investigated at the second level of review. In the
second level decision, dated September 3, 2009, it was
determined that his appeal was "partially granted"
because an inquiry into Plaintiff's allegations had been
conducted. (Id. at 104.) The details of the inquiry
were not disclosed, but the reviewer concluded: "The
inquiry is complete. Staff did not violate CDCR policy."

1 (Id.) At the third level of review the second level
findings were upheld.

2 (Dec. 8, 2010 Order at 1-2.)

3 Plaintiff's motion for a preliminary injunction further
4 alleges that Officer Roach also retaliated against him by issuing
5 two false rule violation reports (RVRs) against him. (Pl.'s May
6 17, 2010 Mot. at 2.) Plaintiff claims that Officer Roach issued
7 the two RVRs to ensure that he would be placed in a
8 behavioral-management unit (BMU) if he receives "a total of three
9 (3) [RVRs] within [sic] a 180 day period." (Id. (citing Cal. Code
10 Regs. tit. 15, § 3000.)) BMU is "alternate general population
11 housing and programming which is designed to reduce inmates'
12 continuing involvement in disruptive behavior, violence, or
13 noncompliance with CDCR rules and regulations, allowing
14 non-disruptive inmates in the general population the opportunity to
15 program without continual interruption due to the behavior of a
16 smaller, more disruptive segment of the inmate population." Cal.
17 Code Regs. tit. 15, § 3000. Plaintiff claims an inmate "placed in
18 BMU will be required to send almost all of their personal property
19 home at the inmate[']s expense." (Pl.'s May 17, 2010 Mot. at 1
20 (citing Cal. Code Regs. tit. 15, §§ 3190(c), 3334(g)(2).)
21 Plaintiff asserts that, unless the Court grants his request for a
22 preliminary injunction, Defendant Roach will issue a third RVR
23 against Plaintiff within a six-month period, which will cause
24 Plaintiff to be transferred to a BMU. (Id.)

25 Defendant Roach claims that he "never charged Riley with a
26 'false' rule violation." (Roach Decl. ¶ 12.) Defendant Roach
27 claims that when he started working at Facility D at SVSP in July,
28

1 2009, he noticed that inmates who were released from their cells
2 for work assignments frequently violated prison rules and
3 regulations by wandering around the building and its various tiers
4 to pass items to other inmates, or to visit other inmates before
5 reporting to work. (Id. ¶ 4.) He "considered this behavior to be
6 a serious safety and security risk because correctional officers
7 were unable to closely monitor unauthorized inmate excursions
8 throughout Facility D." (Id.)

9 According to the record, Defendant Roach issued Plaintiff two
10 RVRs charging him with refusal to obey a direct order on December
11 24, 2009 for passing an item to another inmate's cell, and on March
12 5, 2010 for wandering about the facility before reporting to his
13 work assignment. (Burgh Decl., Exs. A, B.) Plaintiff was found
14 guilty of both charges. (Id.) Defendant Roach claims that at the
15 time he issued the two RVRs, he "did not know that [Plaintiff] had
16 filed an inmate grievance against a correctional officer named
17 Vasquez." (Roach Decl. ¶ 9.) Since March, 2010, the record shows
18 that Defendant Roach has not charged Plaintiff with any other RVRs.
19 (Burgh Decl. ¶ 7; Roach Decl. ¶ 11.) Also, Defendant Roach claims
20 that after he issued the March, 2010 rule violation against
21 Plaintiff, Plaintiff "began obeying [his] direct orders and
22 complying with prison rules most of the time." (Roach Decl. ¶ 10.)
23 Defendant Roach adds that if Plaintiff "continues to comply with
24 prison rules and direct orders from correctional officers," then he
25 has "no intention of charging Plaintiff with another rule
26 violation." (Id.)

27 The record shows that other SVSP officers have charged
28 Plaintiff with two RVRs since March, 2010. (Burgh Decl., Exs.

1 C-D.) On October 24, 2010, SVSP Correctional Officer Lugo charged
2 Plaintiff with a RVR for fighting with another inmate. (Id.)
3 Plaintiff pleaded guilty to that charge. (Id.) And on December
4 23, 2010, SVSP Correctional Officer Calderon charged Plaintiff with
5 a RVR for disobeying a direct order. (Id.) As of February 7,
6 2011, that charge has not yet been adjudicated and is still
7 pending. (Id.)

8 The record also shows that since Plaintiff filed the present
9 motion for a preliminary injunction, he has been housed at Facility
10 D at SVSP and that he has never been transferred to a BMU. (Burgh
11 Decl. ¶ 13.) And there are currently no plans to transfer
12 Plaintiff from Facility D, which is a general-population facility.
13 (Id. ¶ 2.)

14 The Prisoner Litigation Reform Act of 1995 restricts the power
15 of the district court to grant prospective relief in any action
16 involving prison conditions. See 18 U.S.C. § 3626(a); Oluwa v.
17 Gomez, 133 F.3d 1237, 1239 (9th Cir. 1998). Section 3626(a)(2)
18 applies specifically to preliminary injunctive relief. See 18
19 U.S.C. § 3626(a)(2). In civil actions with respect to prison
20 conditions it permits the court to enter a temporary restraining
21 order (TRO) or preliminary injunction "to the extent otherwise
22 authorized by law" but also requires that such an order "must be
23 narrowly drawn, extend no further than necessary to correct the
24 harm the court finds requires preliminary relief, and be the least
25 intrusive means necessary to correct that harm." Id. The court
26 must give "substantial weight to any adverse impact on public
27 safety or the operation of a criminal justice system caused by the
28 preliminary relief." Id.

1 "A plaintiff seeking a preliminary injunction must establish
2 that he is likely to succeed on the merits, that he is likely to
3 suffer irreparable harm in the absence of preliminary relief, that
4 the balance of equities tips in his favor, and that an injunction
5 is in the public interest." Winter v. Natural Resources Defense
6 Council, Inc., __ U.S. __, 129 S. Ct. 365, 374 (2008). In Winter,
7 the Court rejected the Ninth Circuit's earlier approach that
8 allowed issuance of a preliminary injunction based on the
9 "possibility" of irreparable injury, determining that the movant
10 must demonstrate that irreparable injury was likely in order to
11 obtain a preliminary injunction. Id. at 375; see also American
12 Trucking Association v. Los Angeles, 559 F.3d 1046, 1052 (9th Cir.
13 2009) (Winter standard replaces the previous tests for preliminary
14 injunctions that had been used in the Ninth Circuit).

15 Where the court concludes the movant has failed to show a
16 likelihood of success on the merits, the court, in its discretion,
17 need not consider whether the movant would suffer irreparable
18 injury. Guzman v. Shewry, 552 F.3d 941, 948 (9th Cir. 2009).

19 Under Federal Rule of Civil Procedure 52(a), a district court
20 must set forth findings of fact and conclusions of law supporting
21 an order granting or denying an injunction. FTC v. Enforma Natural
22 Products, 362 F.3d 1204, 1212 (9th Cir. 2004). A failure to comply
23 with Rule 52(a) does not require reversal unless a full
24 understanding is not possible without separate findings, in which
25 case the appellate court may remand for more detailed findings and
26 conclusions. Id. Verbatim adoption of a prevailing party's
27 proposed findings in support of an injunction is generally
28 disapproved, though not automatically objectionable if supported by

1 the record. Id. at 1215.

2 Here, Plaintiff fails to establish "that he is likely to
3 succeed on the merits, that he is likely to suffer irreparable harm
4 in the absence of preliminary relief, that the balance of equities
5 tips in his favor, and that an injunction is in the public
6 interest." Winter, 129 S. Ct. at 374.

7 I. Likelihood of Success on the Merits

8 In its Order of Service, the Court found that Plaintiff stated
9 a cognizable retaliation claim against Defendants Roach and Morris,
10 stating:

11 "Within the prison context, a viable claim of First
12 Amendment retaliation entails five basic elements:
13 (1) An assertion that a state actor took some adverse
14 action against an inmate (2) because of (3) that
15 prisoner's protected conduct, and that such action
16 (4) chilled the inmate's exercise of his First
17 Amendment rights, and (5) the action did not reasonably
18 advance a legitimate correctional goal." Rhodes
19 v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
(footnote omitted). To prove retaliation, a plaintiff
20 must show that the defendants took adverse action
21 against him or her that "would chill or silence a person
22 of ordinary firmness from future First Amendment
23 activities." White v. Lee, 227 F.3d 1214, 1228 (9th
24 Cir. 2000) (citing Mendocino Env'tl. Ctr. v. Mendocino
County, 192 F.3d 1283, 1300 (9th Cir. 1999)).

25 In his original complaint, Plaintiff alleges that
26 Defendants Roach and Morris retaliated against him by
27 refusing to release him for his work assignment and
28 falsely documenting his time card to say he was allowed
out to perform his duties, respectively. Plaintiff
claims Defendants Roach and Morris acted in this matter
because Plaintiff filed a complaint against another
officer, Officer Vasquez. Liberally construed,
Plaintiff's allegations state a cognizable retaliation
claim against Defendants Roach and Morris.

(Dec. 8, 2010 Order at 5-6.)

Here, in the present motion for injunctive relief, Plaintiff
claims that Defendant Roach charged him with two "false" RVRs and
would charge him with one more so that he would be placed in a BMU.

1 (Pl.'s May 17, 2010 Mot. at 1.) As explained above, Plaintiff
2 further claims Defendant Roach's actions were motivated by a desire
3 to retaliate against him for submitting a 602 appeal against
4 Officer Vasquez. Defendant Roach claims that, at the time that he
5 charged Plaintiff with the two RVRs, he did not know that Plaintiff
6 had filed that 602 appeal against Officer Vasquez. (Decl. Roach
7 ¶ 9.) And Officer Roach never charged Plaintiff with a third RVR
8 within six months; therefore, Plaintiff did not get transferred to
9 a BMU. (Roach Decl. ¶¶ 7-8, 10.) These facts demonstrate that
10 Plaintiff's conclusory allegations against Defendant Roach are not
11 likely to succeed on the merits.

12 Furthermore, in order for Plaintiff to prevail on his
13 retaliation claim, he must prove that Defendant Roach's conduct did
14 not advance any legitimate correctional goal. See Rhodes, 408 F.3d
15 at 567-68. Plaintiff has not done so. The record shows that
16 Defendant Roach's conduct of issuing RVRs -- especially, when
17 inmates, such as Plaintiff, violated direct orders -- furthered the
18 legitimate correctional goals of prison safety and security.

19 Finally, even if Plaintiff could show that Defendant Roach's
20 actions had a partial retaliatory motive, he cannot show that a
21 retaliatory motive was the "but-for" cause of Defendant Roach's
22 actions. See Hartman v. Moore, 547 U.S. 250, 260 (2006) (if there
23 is a finding that retaliation was not the but-for cause of the
24 action complained of, the claim fails for lack of causal connection
25 between unconstitutional motive and resulting harm, despite proof
26 of some retaliatory animus in the official's mind). The record
27 shows that Defendant Roach's concerns about safety, security, order
28 and discipline were what motivated him to charge Plaintiff with the

1 two rule violations reports. (Roach Decl. ¶¶ 4-6.) And, as
2 mentioned above, Defendant Roach's actions did further those
3 legitimate correctional goals. (Id.)

4 In sum, Plaintiff cannot demonstrate a likelihood of success
5 on the merits of his retaliation claim against Defendant Roach
6 based on the allegations in the present motions.

7 II. Likelihood of Irreparable Harm in the Absence of Preliminary
8 Relief and Balance of Equities

9 While Plaintiff bases his motion for preliminary injunctive
10 relief on his fear of getting a third RVR from Defendant Roach and
11 being transferred to a BMU, the record shows that no such RVR has
12 been issued and no such transfer has been made. Therefore,
13 Plaintiff has not shown he is likely to suffer irreparable harm in
14 the absence of preliminary relief or that the balance of hardships
15 tips sharply in his favor.

16 III. Public Interest

17 Finally, because Plaintiff has failed to satisfy the heavy
18 burden of proving that he is likely to suffer irreparable harm
19 unless an injunction is granted, then it follows that he has also
20 failed to show that such an injunction is in the public interest.

21 Accordingly, Plaintiff's motion for a preliminary injunction
(docket nos. 3,5) is DENIED.

22 This Order terminates Docket nos. 3 and 5.

23 IT IS SO ORDERED.

24 DATED: 3/29/2011

25 
26 CLAUDIA WILKEN
27 United States District Judge
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 SHANNON RILEY,

5 Plaintiff,

6 v.

7 ROACH et al,

8 Defendant.

Case Number: CV10-02088 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on March 29, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Shannon Riley E-48875 D7-125
16 SALINAS VALLEY STATE PRISON (1050)
17 PO BOX 1050
18 SOLEDAD, CA 93960-1050

19 Dated: March 29, 2011

20 Richard W. Wieking, Clerk
21 By: Nikki Riley, Deputy Clerk
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