

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 E.J. MCELROY,
4 Plaintiff,
5 v.
6 NANCY ADAM,
7 Defendant.
8

Case No. [17-cv-03348-YGR](#) (PR)

**ORDER DENYING PLAINTIFF'S
SECOND REQUEST FOR
PRELIMINARY INJUNCTION AND
TRO; AND TERMINATING AS MOOT
DEFENDANT'S MOTION FOR AN
EXTENSION FOR TIME**

9 Plaintiff, a state prisoner who is currently incarcerated at the Richard J. Donovan
10 Correctional Facility ("RJDCF"), filed the instant *pro se* civil rights action pursuant to 42 U.S.C.
11 § 1983 against prison officials at Pelican Bay State Prison ("PBSP"), where he was previously
12 incarcerated. It seems that Plaintiff claims that he was not provided with adequate medical and
13 dental care by Defendant Dr. Nancy Adam at PBSP.

14 Before the Court is Plaintiff's Second Request for Preliminary Injunction and Temporary
15 Restraining Order ("TRO").¹ Dkt. 37. In its January 9, 2019 Order, the Court noted that
16 Plaintiff's Second Request for Preliminary Injunction and TRO was difficult to decipher, but it
17 chose not to rule on that motion and, instead, it directed Defendant to respond to it. *See* Dkt. 49 at
18 3-5.

19 On February 4, 2019, Defendant filed a response, and on February 25, 2019, Plaintiff filed
20 his reply to the response. Dkts. 50, 51.

21 In response, Defendant argues that Plaintiff has not satisfied his burden to demonstrate a
22 need for a preliminary injunction or TRO, and states as follows:

23 As noted above, Plaintiff's request for restraining order contains only
24 a few references to Dr. Adam which all correlate to Plaintiff's
25 treatment at Pelican Bay State Prison. (Docket No. 37, pages 4, 5 and
26 6 of 11.) As the Court has noted, Plaintiff is no longer at Pelican Bay
State Prison where Dr. Adam is employed. (Docket No. 15.) His

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28 ¹ The Court denied without prejudice Plaintiff's First Request for Preliminary Injunction and TRO (dkt. 29) because it had been made moot by his Second Request for Preliminary Injunction and TRO (dkt. 37). *See* Dkt. 49 at 3-4.

1 request for preliminary injunction and/or TRO does not indicate that
2 he [sic] Dr. Adam is in any way responsible for his medical care at
3 R.J. Donovan State Prison. Nowhere does Plaintiff describe
4 irreparable harm that might occur to him if Dr. Adam is not enjoined
5 or restrained by the Court. Plaintiff lists nine forms of relief in his
6 request for preliminary injunction/TRO. (Docket No. 37 at 9-11.) All
7 relate to current conditions or seek monetary damages. Only one,
8 number 5, specifically relates to medical care. (Docket No. 37, 10:12-
9 15). There, Plaintiff makes a vague demand that “Medical
10 Defendants and their department are required to meet plaintiff
11 effective medical care necessities ‘promptly’ in accord with Exhibit
12 B also see Exhibit A.” Plaintiff’s request for current medical care
13 cannot properly be the subject of a TRO or preliminary injunction
14 directed to Dr. Adam at Pelican Bay State Prison. Regardless of the
15 nature of Plaintiff’s claims, a TRO or injunction directed at Dr. Adam
16 . . . 900 miles away from Plaintiff’s place of incarceration could not
17 be narrowly drawn, or the least intrusive means necessary to correct
18 any alleged violation of a constitutional right.

19 Accordingly, Plaintiff has not satisfied his burden to demonstrate a
20 need for a preliminary injunction or restraining order against Dr.
21 Adam.

22 Dkt. 50 at 6-7.

23 First, the Court finds that Plaintiff’s Second Request for Preliminary Injunction and TRO
24 is procedurally deficient in that he has not provided specific facts in an affidavit or verified
25 complaint that clearly show an immediate and irreparable harm will result before the adverse party
26 can be heard in opposition. *See* Fed. R. Civ. P. 65(b)(1)(A). However, even if the notice problem
27 could be solved, Plaintiff would not be entitled to interim relief because the motion is
28 substantively deficient.

The Court finds that Plaintiff does not demonstrate a likelihood of success on the merits
and the possibility of irreparable injury without the TRO. *See Winter v. Natural Res. Defense
Council, Inc.*, 555 U.S. 7 (2008). As explained above, Plaintiff is no longer incarcerated at PBSP,
where Defendant is employed. As Defendant has pointed out, “Plaintiff’s request for preliminary
injunction and/or TRO does not indicate that [Defendant] is in any way responsible for his medical
care at [RJDCF].” Dkt. 50 at 7. And, “[n]owhere does Plaintiff describe irreparable harm that
might occur to him if [Defendant] is not enjoined or restrained by the Court.” *Id.* The Court
agrees with Defendant. After reviewing Plaintiff’s nine forms of relief requested in his pending
motion, the Court also comes to the same conclusion as Defendant that they all relate to current
conditions of confinement at RJDCF or seek monetary damages. *See* Dkt. 37 at 9-11. As to

1 number 5 (listed as relief requested), which specifically relates to medical care, the Court finds
2 that any request for *current* medical care at RJDCF cannot properly be the subject of a preliminary
3 injunction or a TRO directed to Defendant at PBSP. Specifically, there is no showing that
4 Defendant can or should dictate the medical care for a patient Defendant has not seen since
5 Plaintiff was transferred out of PBSP, and there is no showing that Defendant has any control over
6 Plaintiff's medical care at *another* prison, i.e., RJDCF. The Court will not issue a TRO that
7 Defendant is in no position to comply with, nor will it issue a TRO against non-parties, i.e.,
8 medical staff at RJDCF. *See* Fed. R. Civ. P. 65(d)(2) (restraining order binds only the parties,
9 their officers, agents, servants, employees, attorneys and persons in "active concert or participation
10 with [them]"); *see generally* *Pride v. Correa*, 719 F.3d 1130, 1138 ("When an inmate challenges
11 prison conditions at a particular correctional facility, but has been transferred from the facility and
12 has no reasonable expectation of returning, his [injunctive relief] claim is moot.") Accordingly,
13 Plaintiff's Second Request for Preliminary Injunction and TRO is DENIED. Dkt. 37.

14 Also pending before the Court are: (1) Defendant's motion to revoke Plaintiff's *in forma*
15 *pauperis* status under 28 U.S.C. § 1915(g) and dismiss the case without prejudice (dkt. 43),
16 (2) Defendant's motion for an extension of time to file a motion for summary judgment (dkt. 54);
17 (3) Plaintiff's "Motion for Penal/Pecuniary Sanctions [and] Further Relief from Defendant[']s
18 Delay and Failure to Produce Logical Reason[] of Delay/Costs" (dkt. 48); and (4) Plaintiff's
19 motion entitled, "Motion for Judgment Upon Clear Establishment Against[] Defendant[] and/or
20 Counter Summary Judgment in Full Support" (dkt. 53). The Court notes that it has already
21 granted Defendant's previously-filed request for an extension of time to file a motion for summary
22 judgment. *See* Dkt. 49 at 4-5. The Court has already set a briefing schedule directing Defendant
23 to file a motion for summary judgment sixty days after the Court rules on Defendant's pending
24 motion to revoke Plaintiff's *in forma pauperis* status under 28 U.S.C. § 1915(g) and dismiss the
25 case without prejudice. *See id.* Thus, Defendant's motion for an extension of time to file a motion
26 for summary judgment is TERMINATED as moot. Dkt. 54.

27 The Court will rule on the other pending motions in a separate written Order. To date,
28 Plaintiff's "Motion for Judgment Upon Clear Establishment Against[] Defendant[] and/or Counter

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Summary Judgment in Full Support” (dkt. 53) is not fully briefed as Defendant’s response is due on **April 1, 2019**, and Plaintiff’s reply is due **April 15, 2019**. The Court directs Defendant to also respond to Plaintiff’s other pending “Motion for Penal/Pecuniary Sanctions [and] Further Relief from Defendant[’]s Delay and Failure to Produce Logical Reason[.] of Delay/Costs” using the aforementioned briefing schedule.

This Order terminates Docket Nos. 37 and 54.

IT IS SO ORDERED.

Dated: March 15, 2019



YVONNE GONZALEZ ROGERS
United States District Judge