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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEVIN B. PRASAD,
Plaintiff,
v.
COUNTY OF SAN MATEO, et al.,
Defendants.

Case No. [22-cv-02720-JST](#)

**ORDER DENYING REQUEST TO
PAUSE LITIGATION, DENYING
REQUEST FOR LEAVE TO FILE
AMENDED COMPLAINT, DENYING
REQUEST FOR APPOINTMENT OF
COUNSEL, DENYING REQUEST FOR
TEMPORARY RESTRAINING ORDER**

Re: ECF Nos. 25, 27, 29, 32

Plaintiff, an inmate currently housed at Maple Street Correctional Center (“MSCC”), has filed this *pro se* action pursuant to 42 U.S.C. § 1983, alleging that San Mateo County is serving him pork products despite knowing that pork consumption violates the dictates of Plaintiff’s religion, in violation of Plaintiff’s First Amendment right to free exercise of religion. This order addresses the following pending motions: (1) Plaintiff’s motion to pause litigation, ECF No. 25; (2) Plaintiff’s motion requesting leave to file an amended complaint, ECF No. 27; (3) Plaintiff’s request for appointment of counsel ECF No. 29; and (4) Plaintiff’s request for a temporary restraining order, ECF No. 32.

DISCUSSION

I. Motion to Pause Litigation (ECF No. 25)

Plaintiff’s request to pause litigation (ECF No. 25) is DENIED as moot. Plaintiff has informed the Court that he wishes to withdraw this motion. ECF No. 30.

II. Motion for Leave to File Amended Complaint (ECF No. 27)

Plaintiff has requested leave to file an amended complaint, stating that he now realizes that the original complaint was incomplete in that it failed to explain the following: the damages that

1 he has incurred; that Exhibits M and N are exhibits of items that can be purchased in the
2 commissary; that certain named defendants have since been replaced with other individuals, that
3 Denise Chu and Anna Miraramon should be named as defendants; and to add claims for violation
4 of the Fourteenth Amendment’s Due Process Clause, the Equal Protection Clause, and the
5 Religious Land Use Institutionalized Persons Act. ECF No. 27. Plaintiff has not filed a proposed
6 amended complaint.¹ This request is DENIED for failure to comply with N.D. Cal. L.R. 10-1
7 which requires a party seeking to file an amended pleading to “reproduce the entire proposed
8 pleading [without] incorporate[ing] any part of a prior pleading by reference.” N.D. Cal. L.R. 10-
9 1. This denial is without prejudice to Plaintiff filing a request for leave to file an amended
10 complaint, which must be accompanied by a proposed amended complaint containing all the
11 defendants he wishes to sue and all the legal claims he wishes to make.

12 **III. Motion for Appointment of Counsel (ECF No. 29)**

13 Plaintiff has requested appointment of counsel. ECF No. 29. Plaintiff argues that
14 appointment of counsel is warranted because he is unable to afford counsel; his imprisonment
15 greatly limits his ability to litigate; the issues involved are complex and will require significant
16 research and investigation; he has limited access to the law library and limited knowledge of the
17 law, in part due to the prison’s limitations on tablet use in cells; trial will involve conflicting
18 testimony and counsel would better enable Plaintiff to present evidence and cross-examine
19 witnesses; the jail policy prohibiting the receipt of personal mail prevents Plaintiff from preparing
20 declarations to support his claims; defendant San Mateo County and defense counsel can easily
21 access Plaintiff’s legal research requests because his requests are processed by the Service League
22 of San Mateo, which is headed by San Mateo District Attorney Steve Wagstaffe, whose officers
23 are in the same building as defense counsel; jail policy denies Plaintiff access to a computer and to
24 an eraser; and Plaintiff must rely on defendant San Mateo County to mail his pleadings to this
25

26 ¹ Plaintiff reports that on May 28, 2023, he sent to this Court for filing a motion requesting
27 appointment of counsel and a motion for discovery proceedings; and on June 28, 2023, he sent to
28 this Court for filing a motion requesting a temporary restraining order, a motion to allow for an
amended complaint, an amended complaint, a declaration, and a motion for summary judgment.
ECF No. 25 at 4-5. The Court is not in receipt of these documents.

1 Court and to distribute court orders to him, and defendant San Mateo County is untrustworthy
2 because it has previously “lost” Plaintiff’s communications to and from the Court. ECF No. 29.

3 The Court DENIES Plaintiff’s requests for appointment of counsel for failure to
4 demonstrate exceptional circumstances. There is no constitutional right to counsel in a civil case
5 unless an indigent litigant may lose his physical liberty if he loses the litigation. *See Lassiter v.*
6 *Dep’t of Social Services*, 452 U.S. 18, 25 (1981). However, a court “may request an attorney to
7 represent any person unable to afford counsel.” 28 U.S.C. § 1915(e)(1). Appointing counsel is
8 within the court’s discretion and is granted only in exceptional circumstances. *Wilborn v.*
9 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (referring to 28 U.S.C. § 1915(d), which was
10 subsequently renumbered to 28 U.S.C. § 1915(e)(1)). A finding of “exceptional circumstances”
11 requires an evaluation of the likelihood of the plaintiff’s success on the merits and an evaluation of
12 the plaintiff’s ability to articulate his claims pro se in light of the complexity of the legal issues
13 involved. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).
14 Both of these factors must be viewed together before reaching a decision on a request for counsel
15 under § 1915. *See id.* The likelihood of Plaintiff’s success on the merits is unclear at this point as
16 the pending summary judgment motion may resolve this action on the merits. Plaintiff has been
17 able to articulate his claims pro se and file numerous pleadings despite his incarceration and the
18 limitations imposed by jail policy. The request for appointment of counsel is therefore denied for
19 lack of exceptional circumstances without prejudice to the Court *sua sponte* appointing counsel in
20 the future should the circumstances so require. ECF No. 29.

21 **IV. Motion for Temporary Restraining Order (ECF No. 32)**

22 Plaintiff has filed a one-page pleading titled “Temporary Restraining Order,” wherein he
23 requests an order that defendant San Mateo County be prohibited from serving Plaintiff any food
24 containing “Custom Culinary Mix Gravy Country Pan Roast Instant.” ECF No. 32. The Court
25 construes this pleading as a motion for a temporary restraining order. It is unclear if Plaintiff’s
26 declaration, filed on the same day, is intended to support this request for a temporary restraining
27 order. Regardless, the Court DENIES this request because Plaintiff has failed to make a clear
28 showing that he is entitled to the requested injunctive relief. The Prisoner Litigation Reform Act

1 of 1995 (“PLRA”) restricts the power of the court to grant prospective relief in any action
2 involving prison conditions. *See* 18 U.S.C. § 3626(a); *Oluwa v. Gomez*, 133 F.3d 1237, 1239 (9th
3 Cir. 1998). Federal Rule of Civil Procedure 65 sets forth the procedure for issuance of a
4 preliminary injunction or temporary restraining order (“TRO”). “A preliminary injunction is ‘an
5 extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear
6 showing, carries the burden of persuasion.’” *Lopez v. Brewer, et al.*, 680 F.3d 1068, 1072 (9th
7 Cir. 2012) (citation omitted) (emphasis in original). The standard for issuing a TRO is similar to
8 that required for a preliminary injunction. *See Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*,
9 240 F.3d 832, 839 n.7 (9th Cir. 2001). “A plaintiff seeking a preliminary injunction must establish
10 that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence
11 of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the
12 public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). In
13 Plaintiff’s declaration, he appears to imply that he is likely to succeed on the merits of his claim
14 for the following reasons: (1) an inmate former kitchen worker informed him that the gravy
15 contained beef; and (2) the gravy nutrition label stated that the gravy contained pork sausage
16 flavors derived from natural flavors, which means the flavor comes from a natural, not artificial,
17 source. ECF No. 28 at 3, 5. Plaintiff’s assertions are insufficient to make a clear showing that he
18 is likely to succeed on the merits, for several reasons. The inmate former kitchen worker
19 apparently made the statement in June 2020. ECF No. 1 at 14. The basis of the inmate former
20 kitchen worker’s knowledge, i.e., how he was aware of the ingredients of the gravy, is unknown.
21 The fact that the pork sausage flavor is derived from a natural source does not mean that source is
22 pork. Finally, the unidentified inmate former kitchen worker’s statement is hearsay. Although
23 district courts have the discretion to consider hearsay in ruling on a preliminary injunction
24 *Novation Sols., Inc. v. Issuance Inc.*, No. 223CV00696WLHKSX, 2023 WL 6373871, at *6 (C.D.
25 Cal. Aug. 16, 2023), that is because “[t]he urgency of obtaining a preliminary injunction
26 necessitates a prompt determination and makes it difficult to obtain affidavits from persons who
27 would be competent to testify at trial.” *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th
28 Cir. 1984). That is not the circumstance here. Moreover, even giving the statement some weight,

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the Court it insufficient to carry Plaintiff’s burden.

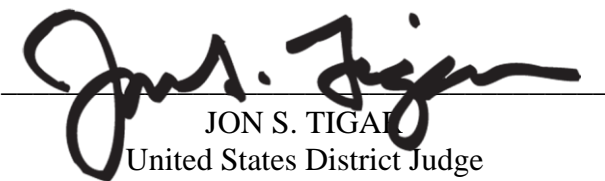
CONCLUSION

For the foregoing reasons, the Court DENIES Plaintiff’s motion to pause litigation, ECF No. 25; DENIES Plaintiff’s request for leave to file an amended complaint, ECF No. 27; DENIES Plaintiff’s request for appointment of counsel, ECF No. 29; and DENIES Plaintiff’s request for a temporary restraining order, ECF No. 32.

This order terminates ECF Nos. 25, 27, 29, 32.

IT IS SO ORDERED.

Dated: February 6, 2024



JON S. TIGAI
United States District Judge