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E-FILED - 11/10/09

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

GEORGE FLORES,)
)
 Plaintiff,)
)
 v.)
)
 WARDEN EVANS, et al.,)
)
 Defendants.)
 _____)

No. C 08-3297 RMW (PR)
ORDER DENYING
PLAINTIFF’S MOTION FOR
TEMPORARY RESTRAINING
ORDER / PRELIMINARY
INJUNCTION
(Docket No. 42)

Plaintiff, an inmate at Kern Valley State Prison, filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983. On October 3, 2008, plaintiff filed a first amended complaint. After reviewing the amended complaint, the court found that it stated a cognizable Eighth Amendment claim against prison officials for cruel and unusual punishment. On August 7, 2009, the court granted defendants’ motion to dismiss and dismissed the complaint for failure to exhaust. Plaintiff did not file an appeal.

On October 16, 2009, plaintiff filed a post-judgment motion for temporary restraining order and/or preliminary injunction. For the reasons stated below, the motion is DENIED.

Federal Rule of Civil Procedure 65 sets forth the procedure for issuance of a preliminary injunction or temporary restraining order (“TRO”). Prior to granting a preliminary injunction, notice to the adverse party is required. See Fed. R. Civ. P. 65(a)(1). “A plaintiff seeking a

1 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to
2 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
3 favor, and that an injunction is in the public interest.” Winter v. Natural Resources Defense
4 Council, Inc., 129 S. Ct. 365, 374 (2008). Here, because this action is closed, plaintiff cannot
5 establish that he is likely to succeed on the merits. Accordingly, plaintiff’s Motion for
6 Temporary Restraining Order / Preliminary Injunction is DENIED.

7 IT IS SO ORDERED.

8 DATED: 11/6/09


RONALD M. WHYTE
United States District Judge

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