

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MAURICE DAVIS,  
  
Plaintiff,  
  
v.  
  
UNITED STATES PARALYMPICS-USOC,  
UNITED STATES OLYMPIC COMMITTEE,  
INTERNATIONAL PARALYMPIC  
COMMITTEE  
  
Defendants.

) Case No. 5:12-CV-04436-EJD  
)  
) **ORDER DENYING *EX PARTE***  
) **MOTION FOR TEMPORARY**  
) **RESTRAINING ORDER AND**  
) **DISMISSING WITH PREJUDICE**

**I. Background**

On August 23, 2012, Plaintiff Maurice Davis (“Plaintiff”) filed a complaint against the United States Paralympics-USOC, the United States Olympic Committee (“USOC”), and the International Paralympic Committee (collectively “Defendants”) seeking an *ex parte* temporary restraining order (“TRO”) compelling Defendants to “ let Plaintiff compete in the 50 meter freestyle swim event at the S6 level at the Paralympics which will take place in London, England from August 20, 2012 to and including September 9, 2012.” Dkt. No. 1-1 (Prop. Order). Plaintiff alleges that he has suffered discrimination on the basis of race and that he will be irreparably harmed unless the court grants this motion for a TRO.

The Complaint alleges that on May 17, 2012 Plaintiff, a black male, went to the University of Cincinnati for his scheduled “classification session,” to try out for the Paralympic swim

1 competition. Compl., ECF No. 1 ¶¶ 5-6. Plaintiff was tested by two white males, and told at the  
2 end of his test that he was not eligible to compete. Compl. ¶¶ 6-7. Plaintiff appealed the decision,  
3 and was retested on May 18, 2012 by a white female examiner and a white male examiner. Compl.  
4 ¶ 8. The female examiner initially told Plaintiff he had passed; however, after some delay, the two  
5 examiners returned to inform Plaintiff he had not in fact passed. Compl. ¶¶ 9-11. Plaintiff believes  
6 he was discriminated against on account of his race. Compl. at 4:3-9.

7 Since returning from Cincinnati, Plaintiff has sought a TRO relating to the Paralympic  
8 swim competition three times before Judge Koh. See 12-CV-02999 at Dkt. No. 1, 5, and 10. This  
9 action is thus Plaintiff's fourth attempt in this district to obtain a TRO related to the Paralympics  
10 swim competition. The first TRO, filed on June 11, 2012, named only the USOC as Defendant,  
11 and requested the court direct the USOC to allow Plaintiff to compete in the Paralympic swim trials  
12 scheduled for June 14-16, 2012, at Bismarck State College. The court denied this TRO for failure  
13 to comply with the procedural requirements governing the filing of an *ex parte* TRO and for failure  
14 to show a likelihood of success on the merits. See 12-CV-02999 at Dkt. No. 4. The second TRO,  
15 filed on July 3, 2012 as part of an amendment to the complaint, named the same Defendant and  
16 requested the same relief as the first request for a TRO. This second TRO was denied for a failure  
17 to show a likelihood of success on the merits as well as failure to show a likelihood of irreparable  
18 injury. See 12-CV-02999 at Dkt. No. 9. The third TRO, filed with a "First Amended Complaint,"  
19 added the United States Paralympics-USOC and the International Paralympic Committee as  
20 Defendants, and requested, as in the instant action, that the court direct Defendants "to allow  
21 Plaintiff the opportunity to compete in the 50 meter freestyle swim competition at the 26 level  
22 (classification level) at the Paralympics which will take place in London, England from August  
23 29m 2012 to and including 9 September 2012." See 12-CV-02999 at Dkt. No. 10. This third TRO  
24 was likewise denied for failure to show a likelihood of success on the merits. See 12-CV-02999 at  
25 Dkt. No. 4. In addition, the court denied Plaintiff's motion to proceed in forma pauperis, finding  
26 that in light of Plaintiff's failure to allege additional facts or submit any evidence to any of his  
27 requests for TROs, Plaintiff's claims were without basis and thus frivolous under 28 U.S.C.

1 1915(e)(2)(B). See 12-CV-02999 at Dkt. No. 12, p. 6. The court dismissed Plaintiff's First  
2 Amended Complaint without leave to amend. See 12-CV-02999 at Dkt Entry 12, p. 6-7.

## 3 **II. Claim Preclusion**

4 Claim preclusion, also known as res judicata, prevents issues decided by one court from  
5 being relitigated in another case. This principle applies when there is "(1) an identity of claims, (2)  
6 a final judgment on the merits, and (3) privity between parties." Turtle Island Restoration Network  
7 v. U.S. Dep't of State, 673 F.3d 914, 917 (2012) (internal quotations omitted).

8 Claim preclusion clearly applies in this action. First, the claims in this action are identical  
9 to those in the previous three actions. Each of Plaintiff's TRO requests has been based on  
10 Plaintiff's experience at the Paralympic swim classification session that took place on May 17-18,  
11 2012 in Cincinnati, Ohio. While Plaintiff has not specifically alleged any cause of action, a liberal  
12 reading of his complaint suggests that he intends to state claims under the Equal Protection Clause  
13 of the Fourteenth Amendment and 42 U.S.C. §§ 1981 and 1983. See Boag v. MacDougall, 454  
14 U.S. 364, 365, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982) (instructing courts to liberally construe the  
15 pleadings of *pro se* litigants). These claims mirror those found in Plaintiff's three previous  
16 requests for TROs.

17 Next, a final judgment has already issued on these claims. The court denied Plaintiff's third  
18 request for a TRO, and dismissed his complaint without leave to amend. See 12-CV-02999 at Dkt.  
19 No. 12. Such a dismissal constitutes a final judgment. See Stewart v. U.S. Bancorp, 297 F.3d 953,  
20 957 (9th Cir. 2002) (holding that dismissal based on a plaintiff's failure to plead a cognizable claim  
21 is a "judgment on the merits" for res judicata purposes) (citing Federated Dep't Stores v. Moitie,  
22 452 U.S. 394, 399 n. 3, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981)).

23 Finally, the parties are identical. In the instant action, Plaintiff has named the USOC, the  
24 United States Paralympics-USOC and the International Paralympic Committee as Defendants.  
25 Previously, Plaintiff named the USOC as Defendant in each of his actions, and named the United  
26 States Paralympics-USOC and the International Paralympic Committee in his third request for  
27 TRO and First Amended Complaint.

1 Plaintiff requests that this court entertain his complaint alleging the same cause of action  
2 against the same parties as previously considered and rejected by Judge Koh. The instant action  
3 represents the exact situation claim preclusion seeks to prevent. This court will therefore not  
4 consider the merits of this complaint and request for TRO, because the action is unambiguously  
5 barred.

6 **III. Conclusion**

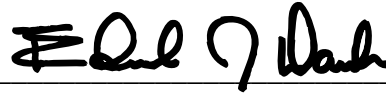
7 For the foregoing reasons, Plaintiff's *ex parte* request for a TRO is DENIED. Plaintiff's  
8 complaint is barred by claim preclusion and therefore is DISMISSED with prejudice.

9 In addition, the court finds this action frivolous and duplicative under 28 U.S.C. §  
10 1915(e)(2)(B)(i); Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). The request to  
11 proceed in forma pauperis is DENIED for this reason.

12 The clerk shall close this file.

13 **IT IS SO ORDERED.**

14 Dated: August 24, 2012



15  
16 EDWARD J. DAVILA  
United States District Judge