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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LANCE MURSCHEL,  
CDCR #P-04895,  
  
Plaintiff,  
  
vs.  
  
DANIEL PARAMO, et al.,  
  
Defendants.

Case No.: 3:17-cv-1142-BTM-AGS  
  
**ORDER DENYING MOTION FOR  
TEMPORARY RESTRAINING  
ORDER**

Lance Murschel (“Plaintiff”), a prisoner incarcerated the Richard J. Donovan Correctional Facility (“RJD”) located in San Diego, California, and proceeding pro se, has filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983. (See ECF No. 1.) Plaintiff has also filed Motion for a Temporary Restraining Order (“TRO”) and Preliminary Injunction (ECF No. 3).

1 The Court has granted Plaintiff *in forma pauperis* (“IFP”) status but has not yet  
2 conducted the required sua sponte screening of Plaintiff’s Complaint pursuant to 28  
3 U.S.C. § 1915(e)(2) & § 1915A. While the Court has not made the determination  
4 whether Plaintiff has stated claims against the named Defendants that survive the sua  
5 sponte screening process, the Court ordered Defendants to respond to Plaintiff’s Motion  
6 for a TRO or Preliminary Injunction. On June 23, 2017, Defendant Paramo filed a  
7 response to Plaintiff’s Motion through counsel specially appearing on his behalf. (ECF  
8 No. 8.)

9 **I. Motion for Restraining Order**

10 Plaintiff has filed a “Motion for a Temporary Restraining Order and Preliminary  
11 Injunction” pursuant to FED. R. CIV. P. 65. (ECF No. 3.) Plaintiff seeks an order “to  
12 ensure that he is not transferred out of Richard J. Donovan Correctional Facility.” (*Id.* at  
13 1.) Plaintiff claims that Defendants are retaliating against him for filing this lawsuit by  
14 “recommending that the Plaintiff be transferred out of [RJD] to another institution [in]  
15 Northern California.” (*Id.* at 3-4.) Plaintiff further claims that this transfer will  
16 “significantly put his life on danger or risk of serious harm or injury.” (*Id.* at 4.)

17 “The standard for issuing a temporary restraining order is identical to the standard  
18 for issuing a preliminary injunction.” *Lockheed Missile & Space Co., Inc. v. Hughes*  
19 *Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); *see also Stuhlberg Intern. Sales*  
20 *Co., Inc. v. John D. Brushy and Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)  
21 (standards for issuing a TRO are “substantially identical” to those for issuing a  
22 preliminary injunction). A plaintiff seeking a preliminary injunction must establish: (1) a  
23 likelihood of succeed on the merits; (2) a likelihood that plaintiff will suffer irreparable  
24 harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor;  
25 and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council*,  
26 555 U.S. 7, 20 (2008).

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1 As stated above, Defendant Paramo has filed a response in opposition to Plaintiff's  
2 request. (ECF No. 8.) In support of the opposition, Defendant Paramo has supplied the  
3 declaration of J. Homer, along with the declaration of C. Weathersbee. (ECF Nos. 8-1, 8-  
4 2.)

5 Plaintiff claims he was told by "Correctional Counselor John Doe" in April of  
6 2017 that he "will appear to the Institution Classification Committee" who will  
7 "recommend that Plaintiff be transferred out of [RJD] E.P.P. level of care SNY yard to  
8 Northern California State Prison Level II or III which houses inmates in dorms." (Pl.'s  
9 Mot. at 6.) Plaintiff objects to this "transfer recommendation on the basis of health  
10 issues, family ties and safety concerns." (*Id.*) Plaintiff maintains that this transfer will  
11 "seriously threaten Plaintiff's life, health and safety and that it will be against his will."  
12 (*Id.*)

13 Defendant argues that Plaintiff is simply not entitled to relief because "he is not  
14 scheduled to be transferred from RJD." (Def.'s Opp'n, ECF No. 8, at 2.) (emphasis in  
15 original.) In support of this statement, Homer's declaration, signed under penalty of  
16 perjury, indicates that Homer is a Correctional Counselor II and he is "familiar with the  
17 policies and procedures of CDCR and RJD regarding the assignments of an inmate's  
18 housing classification status, and an inmate's transfers between CDCR institutions."  
19 (Homer Decl. at ¶ 2.) As a Correctional Counselor, Homer has access to "each inmate's  
20 records at RJD regarding their current classification status and any pending transfers to  
21 other CDCR institutions." (*Id.*)

22 Homer's review of Plaintiff's file indicates that he is "not currently recommended  
23 or scheduled to be transferred from RJD." (*Id.* at ¶ 3(a)). On February 27, 2017, a  
24 "special committee" did recommend that Plaintiff be "transferred to a lower-level facility  
25 than RJD, which is a high-security Level IV facility." (*Id.* at ¶ 3(b)). The committee  
26 then recommended a transfer to Mule Creek State Prison ("MCSP") which is a lower  
27 level security institution. (*Id.*) However, on March 16, 2017, a "Correctional Counselor  
28 III" did not "adopt the Committee's recommendation" in part because there was "no bed

1 space available” at a lower level institution. (*Id.* at ¶ 3(c)). Therefore a “CDCR Form  
2 128-G” was issued which “endors[ed] inmate Murschel to be retained at RJD.” (*Id.*; Ex.  
3 2, Auditor Action dated Mar. 16, 2017.) It is further noted that Plaintiff is currently  
4 housed in RJD’s “Enhanced Out Patient (“EOP”) Special Needs Yard (“SNY”).” (*Id.* at  
5 ¶ 3(d)). Weathersbee, Litigation Coordinator for MCSP, declares that MCSP “has had  
6 “Enhanced Out Patient/Special Needs Yards for Level II and Level III inmates” for at  
7 least the past six months. (Weathersbee Decl. at ¶ 2.)

8 In order to meet the “irreparable harm” requirement, Plaintiff must do more than  
9 simply *allege* imminent harm; he must demonstrate it. *Caribbean Marine Servs. Co., Inc.*  
10 *v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988). This requires Plaintiff to demonstrate by  
11 specific facts that he faces a credible threat of immediate and irreparable harm, unless an  
12 injunction issues. FED. R. CIV. P. 65(b). “Speculative injury does not constitute  
13 irreparable injury sufficient to warrant granting a preliminary injunction.” *Caribbean*  
14 *Marine*, 844 F.2d at 674-75.

15 Here, the Court finds that Plaintiff has failed to establish the imminent irreparable  
16 harm required to support a preliminary injunction. *See Winter*, 555 U.S. at 20; *Alliance*  
17 *for the Wild Rockies*, 632 F.3d at 1131. Plaintiff must establish that the threat of future  
18 injury is both “real and immediate,” not just “conjectural” or “hypothetical.” *City of Los*  
19 *Angeles v. Lyons*, 461 U.S. 95, 102 (1983). The only basis for his request is what  
20 Plaintiff was allegedly told by a “John Doe” correctional counselor regarding a  
21 “recommendation” that will be made by unidentified individuals on a committee at some  
22 future point in time. Plaintiff does not know which prison is being recommended and  
23 assumes he will be housed in a dorm setting. Plaintiff provides no documentation in  
24 support of any of his claims. Defendant Paramo has set forth verified declarations, along  
25 with documentation, that demonstrate that Plaintiff is not currently scheduled to be  
26 transferred. Moreover, even when a transfer was considered, it did not go forward  
27 because the institution recommended did not have the facilities available to accommodate  
28 Plaintiff’s various housing and medical needs.

1 Finally, Plaintiff does not have a constitutional right to be housed in the institution  
2 of his choice. *See Olim v. Wakinekona*, 461 U.S. 238, 249 (1983); *McKune v. Lile*, 536  
3 U.S. 24, 39 (2002) (“It is well settled that the decision where to house inmates is at the  
4 core of prison administrators’ expertise.”)

5 For all these reasons, Plaintiff’s Motion for TRO and Preliminary Injunction (ECF  
6 No. 3) is DENIED.

7 **II. Conclusion and Order**

8 Good cause appearing, the Court:

9 **DENIES** Plaintiff’s Motion for Restraining Order and Preliminary Injunction  
10 (ECF No. 3) without prejudice.

11 **IT IS SO ORDERED.**

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13 Dated: July 3, 2017



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Hon. Barry Ted Moskowitz, Chief Judge  
United States District Court