

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SEAN T. DOUTRE,)
)
Plaintiff,)
vs.)
)
ROMEO ARANAS, et al.,)
)
Defendants.)
)

Case No.: 2:12-cv-00772-GMN-VCF

ORDER

Pending before the Court is the Motion for Temporary Restraining Order (ECF No. 26) filed by pro se Plaintiff Sean T. Doutre on May 20, 2013.

I. BACKGROUND

Plaintiff is a prisoner in the custody of the Nevada Department of Corrections, and on May 8, 2012, he filed an Application for Leave to Proceed In Forma Pauperis, along with a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging deliberate indifference to medical needs against Defendants Romeo Aranas, B. Gutierrez, C. Dressler, B. Oliver, James Bannister, James Cox, and John/Jane Doe. (ECF No. 1.) His Complaint was screened pursuant to 28 U.S.C. § 1915A, and 28 U.S.C. § 1915, and filed on October 30, 2012. (Screening Order, ECF No. 3; Compl., ECF No. 4.) The Court ordered that Plaintiff could proceed with his claims against Defendants Aranas, Gutierrez, Dressler, Oliver, and a Doe defendant, alleging deliberate indifference to medical needs in violation of the Eighth Amendment, and that all other claims and defendants were dismissed with prejudice. (Id.) The action was stayed for ninety days and proceeded to mediation, but a settlement was not reached. (Screening Order, ECF No. 3; Mins. of Proceedings, ECF No. 12.) On February 11, 2013, Plaintiff was granted leave to proceed in forma pauperis and service of Plaintiff’s Complaint was ordered. (Order, Feb. 11, 2013, ECF No. 13.)

1 **II. LEGAL STANDARD**

2 Federal Rule of Civil Procedure 65 governs preliminary injunctions and temporary
3 restraining orders, and requires that a motion for temporary restraining order include “specific
4 facts in an affidavit or a verified complaint [that] clearly show that immediate and irreparable
5 injury, loss, or damage will result to the movant before the adverse party can be heard in
6 opposition,” as well as written certification from the movant’s attorney stating “any efforts
7 made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b).

8 Temporary restraining orders are governed by the same standard applicable to
9 preliminary injunctions. See *Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181
10 F.Supp. 2d 1111, 1126 (E.D. Cal. 2001). Furthermore, a temporary restraining order “should
11 be restricted to serving [its] underlying purpose of preserving the status quo and preventing
12 irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose
13 Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

14 A preliminary injunction may be issued if a plaintiff establishes: (1) likelihood of
15 success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief;
16 (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public
17 interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “Injunctive relief [is]
18 an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
19 entitled to such relief.” *Id.* at 22. The Ninth Circuit has held that ““serious questions going to
20 the merits’ and a hardship balance that tips sharply toward the plaintiff can support issuance of
21 an injunction, assuming the other two elements of the Winter test are also met.” *Alliance for the
22 Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011).

23 **III. DISCUSSION**

24 Rule 65(b)(1) permits a court to “issue a temporary restraining order without written or
25 oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a

1 verified complaint clearly show that immediate and irreparable injury, loss, or damage will
2 result to the movant before the adverse party can be heard in opposition; and (B) the movant's
3 attorney certifies in writing any efforts made to give notice and the reasons why it should not be
4 required." Fed. R. Civ. P. 65(b)(1).

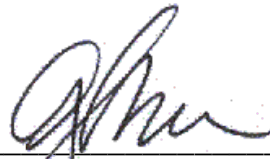
5 Here, Plaintiff has attached an affidavit of his notification to Defendants of his request
6 for temporary restraining order and preliminary injunction. However, he does not provide a
7 basis for the Court to find that "immediate and irreparable injury, loss, or damage will result" to
8 him before Defendants can be heard in opposition, as required by Rule 65(b)(1)(A).

9 Accordingly, the Court finds that the requisite clear showing has not been provided, and that
10 therefore the Court cannot grant Plaintiff's request for an injunction on an ex parte basis. The
11 Court will consider Plaintiff's request pursuant to his contemporaneously filed Motion for
12 Preliminary Injunction (ECF No. 27), according to the regular briefing schedule.

13 **IV. CONCLUSION**

14 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Temporary Restraining Order
15 (ECF No. 26) is **DENIED**.

16 **DATED** this 21st day of May, 2013.

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20 Gloria M. Navarro
21 United States District Judge
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