

1 Without prejudice ucc 1-207
BAREY RASHAD HARRIS #95363

2 P.O. Box 650

3 Indian Springs, NV. 89078

4

5

United States District Court

6

District of Nevada

7

8 Without prejudice ucc 1-207
BAREY RASHAD HARRIS,

9

Plaintiff,

CASE NO.

10

V.S.

11

The State of Nevada, et al.

MOTION for Temporary Restraining

12

Defendants;

OR DER ~~and~~ ^{or} preliminary injunction.

13

14 Comes now, HARRIS moves this honorable court

15 on motion for temporary restraining order or preliminary

16 injunction pursuant to Fed. R. Civ. P. 65. This motion

17 is made and base upon fundamental fairness of justice

18 all papers, pleading and documents on file herein.

19

20

MEMORANDUM of POINT

21

AND AUTHORITIES

22

23

I. Declaration in Support of HARRIS MOTION

24

for TRO/ INJUNCTION

25

26

1. I am the Natural person In This case, I make this declaration

27

in Support of my motion for Temporary Restraining order or preliminary

28

INJUNCTION to ensure that I receive necessary medical care.

1 a). I hereby incorporate medical record as fully enunciated
2 herein.

3

4 3). Contrary to DR. ALL & DR. HENSEN directions, I
5 have not been provided with any outside individual
6 ULTRASOUND from an outside physician to examine
7 the mass on my testicle's the right & left
8 and to run blood work count. or provide me
9 with adequate medication to treat my severe pain and
10 agony, or with consultation by H.D.S.P physician who
11 qualified to assess & treat my conditions.

12

13 4). I have not been provided with any reason why
14 I have not been seen yet with any medical attention
15 like the above outside ultrasound to remedy my pain
16 because there is an informal policy at H.D.S.P to giving
17 low priority to the medical needs of segregated
18 incarcerated persons and/or refusing to provide them
19 with any medical care outside of H.D.S.P. unless
20 their medical conditions is life threatening.

21

22 5). my testicle's make ~~it~~ hard for me to sleep
23 at night I am embarrassed to keep telling each
24 nurse at prison call of what's going on everyday
25 on top of me writing to H.D.S.P doctor's to see what's
26 going on with me everyday. from me being kick in
27 the private area by their staff member.

28

1 6). I am suffering irreparable harm in the form of
2 repeatedly physical, mental pain & agony from each week
3 my growing get bigger and bigger which my testicles
4 are starting to be hard like a rock which are
5 increasing the risk of me losing my testicles
6 and/or life because it could be cancer.,

7
8 7). Joymlé Cabrera is the medical administrator at H.D.S.P.,
9 is responsible for scheduling medical appointments outside
10 of H.D.S.P. when an incarcerated person needs specialized
11 treatment and/or surgery, medication or evaluations.

12
13 8). KAY is the warden at HDSP and is in
14 charge of transportation of incarcerated person to medical
15 appointments and the approving of somewhat medication
16 for treatment.

17
18 a). Together, they are responsible for providing me the
19 necessary physical arrangement to be seen by a specialist.

20
21 10.) for the reason set forth in my complaint & the memorandum
22 of law filed with this motion, I am entitled to temporary
23 restraining order requiring defendants to arrange for an
24 examination & execute a plan of treatment for my
25 testicles without any interference, and a transfer
26 to a prison of my choice.

27
28

1 11) I WILL LIKE TO BE TRANSFER TO ANOTHER INSTITUTION
2 BECAUSE I AM AFRAID NOW IF SOMETHING HAPPEN
3 TO ME THAT NEED MEDICAL ATTENTION THEY WILL
4 LET ME DIE OUT OF RETALIATION OF THIS TRO/~~&~~/PRELIMINARY
5 INJUNCTION.

6
7 12). I, ^{WITHOUT PREJUDICE UCL 1-207} BARRY RASHAD HARRIS ON PERSONAL KNOWLEDGE, AM
8 OVER THE AGE OF 18 YEARS, COMPETENT AS A NATURAL PERSON
9 TO TESTIFY TO MATTERS STATED HEREIN, AS WELL AS ALL
10 PAPERS, PLEADINGS, AND DOCUMENTS ON FILE HEREIN, DECLARE
11 UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND
12 CORRECT. 28 USC § 1746

13

14

15 II. MEMORANDUM OF LAW IN SUPPORT

16

17 A. MOTION FOR INJUNCTION RELIEF

18

19 A TEMPORARY RESTRAINING ORDER MAY BE ISSUED WITHOUT NOTICE
20 TO THE ADVERSE PARTY ONLY IF THE MOVING PARTY: (1) PROVIDES
21 A SWORN STATEMENT CLEARLY DEMONSTRATING "THAT
22 IMMEDIATE AND IRREPARABLE INJURY, OR DAMAGE WILL RESULT
23 TO THE MOVANT BEFORE THE ADVERSE PARTY CAN BE HEARD IN
24 OPPOSITION;" AND (2) SET FORTH THE EFFORTS MADE
25 TO NOTIFY THE OPPOSING PARTY AND WHY NOTICE
26 SHOULD BE NOT BE REQUIRED FED. CIV. P. 65(6)(C).

27

28

1 TRO's issued without notice" are no doubt necessary in
2 certain circumstances, but under federal law they
3 should be restricted to serving their underlying purpose
4 of preserving the status quo & preventing irreparable harm
5 just so long as is necessary to hold a hearing, and
6 no longer." Reno Air Racing Ass'n v. McCord, 452 F.3d 1126,
7 1131 (9th Cir. 2006) quoting Granary Goose Foods, Inc v. Bd of Teamsters,
8 415 U.S. 423, 430 (1974)

10 The analysis for a temporary restraining order is "substantially
11 identical" to that of a preliminary injunction. Stuhlbarg Intern.
12 Sales Co. Inc v. John D. Brush & Co., Inc 240 F.3d 832, 839 7.7
13 (9th Cir. 2001).

15 A preliminary injunction is "an extraordinary remedy that may
16 only be awarded upon a clear showing that the plaintiff is
17 entitled to such relief" Winter v. Natural Res. Def. Council, Inc
18 555 U.S. 7/22 (2008). To obtain a preliminary injunction,
19 plaintiff must establish four elements: "(1) a likelihood of
20 success on the merits, (2) that the plaintiff will likely
21 suffer irreparable harm in the absence of preliminary relief
22 (3) that the balance of equities tips in its favor, and (4) that the
23 public interest favors an injunction" Wells Fargo & Co. v. ARD Ins. & Fin. Servs.
24 Inc., 756 F.3d 1069, 1071 (9th Cir. 2014) as amended (Mar. 11, 2014) citing Winter, 555
25 U.S. 7/20 (2008) A preliminary injunction may also issue under the "serious
26 questions" test Alliance for the Wild Rockies v. Cottrell 632 F.3d 1127, 1134, (9th Cir. 2011)
27 (affirming the continued viability of this doctrine post-Winter.)

28

1 - according to the test, a plaintiff can obtain a preliminary
2 injunction by demonstrating "that serious questions going
3 to the merits were raised and the balance of hardship tips
4 sharply in the plaintiff's favor", in addition to
5 the other winter elements, *Id.* at 1134-35 (citation omitted)

6
7 B. HARRIS IS THREATENED WITH IRREPARABLE HARM

8
9 HARRIS STATED THAT HE HAS BEEN DENIED MEDICAL CARE
10 FOR A SERIOUS NEED CONTRARY TO A DOCTOR ORDER TO BE
11 SEEN BY AN OUTSIDE PROVIDER SUCH CONDUCT BY DEFENDANTS IS
12 CLEAR VIOLATION OF THE 8TH AMENDMENT, *ESTELLE V. GAMBLE*, 429,
13 U.S. 97, 105, 97 S.Ct. 285 (1976) (noting that intentionally interfering
14 WITH THE TREATMENT ONCE PRESCRIBED" IS A FORM OF
15 UNLAWFUL DELIBERATE INDIFFERENCE)

16
17 AS A MATTER OF LAW THE CONTINUING DEPRIVATION OF
18 CONSTITUTIONAL RIGHTS CONSTITUTES IRREPARABLE HARM.
19 ELROD V. BURNS, 427 U.S. 347, 373, 96 S.Ct. 2673 (1976). American
20 TRUCKING ASSOCIATIONS, INC. V. CITY OF LOS ANGELES 559, f.3d, 1046, 1058, 59/9TH CIR 200

21
22 THIS PRINCIPLE HAS BEEN APPLIED IN PRISON LITIGATIONS GENERALLY. SEE, -
23 JOLLY V. CAUGHLIN, 76 F.3d 468, 482 (2d Cir. 1996); NEWSON V. NORRIS, 888 F.2d.
24 371, 378, (6TH CIR. 1989); MUTCHELL V. CUOMO, 748, f.2d. 804, 806, (2d Cir. 1984)
25 MCCLENDON V. CITY OF ALBUQUERQUE, 272 F.Supp.2d 1250, 1259 (D.N.M. 2003)
26 AND SPECIFICALLY IN PRISON MEDICAL CASES. PHILLIPS V. MICHIGAN DEPT OF
27 CORRECTIONS 731 F.Supp. 792, 801 (W.D. Mich 1990), aff'd 932 F.3d, 969
28 (6TH CIR. 1991).

1 C. BALANCE of hardships favor HARRIS

2

3 In deciding whether to grant TRO and preliminary
4 injunctions, courts ask whether the suffering of the
5 moving party if the motion is granted.

6 Mitchell v. Cuomo 748 F.3d. 804 (2d Cir. 1984)

7 (holding that dangers posed by prison crowding
8 outweighed States financial and administration

9 concerns); Duran v. Araya, 642 F. Supp. 510, 527. (D.N.M. 1986)

10 (holding that prisoners' interest in safety and medical
11 care outweighed States interest in saving money
12 by cutting staff).

13

14 In this case, the present suffering of Harris and his
15 potential suffering if he permanently loses the normal
16 use of his testicles or the loss of his wife
17 are enormous. The "suffering" the defendants will
18 experience if the court grants the motions will

19 consist of taking ~~MR.~~ HARRIS to a Las Vegas physician
20 and carry out a medical plan already order, something

21 that defendants do, and are obligated to do for
22 incarcerated person of H.D.S.P on a daily basis.

23 Defendants hardship amounts to no more than
24 business as usual.

25

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1 D. HARRIS IS LIKELY TO SUCCEED ON THE MERITS.

2

3 HARRIS HAS A GREAT LIKELIHOOD OF SUCCESS ON THE
4 MERITS. WHAT DEFENDENTS HAVE DONE "INTENTIONALLY
5 INTERFERING WITH MEDICAL TREATMENT ONCE ORDER
6 WAS SPECIFICALLY SINGLED OUT BY THE SUPREME COURT
7 AS AN EXAMPLE OF UNCONSTITUTIONAL" DELIBERATE
8 INDIFFERENCE TO PRISONER'S MEDICAL NEEDS ESTELLE V GAMBLE,
9 429 U.S. 97, 105, 97 S. CT. 285 (1976).

10

11 MANY OTHER COURT HAVE HELD THAT THE FAILURE TO
12 CARRY OUT PHYSICIANS ORDERS IS UNCONSTITUTIONAL
13 JOHNSON V. WRIGHT, 412 F.3D 398, 406 (2D CIR, 2005)
14 (DENIAL OF REBETRON THERAPY FOR HEPATITIS C. CONTRARY
15 TO THE RECOMMENDATION OF ALL THE PLAINTIFF'S TREATING
16 PHYSICIANS); LEWISON V. DALLAS COUNTY, 286 F.3D 257, 263
17 (5TH CIR 2002) (DISREGARD FOR FOLLOW-UP CARE INSTRUCTIONS).

18

19 E. RELIEF SOUGHT WILL SERVE THE PUBLIC INTEREST

20

21 THE GRANT OF RELIEF WILL SERVE THE PUBLIC INTEREST
22 BECAUSE IT IS ALWAYS IN THE PUBLIC INTEREST FOR PRISON
23 OFFICIALS TO OBEY THE LAW, ESPECIALLY THE CONSTITUTION.
24 PHELPS. ROPER V. NIXON, 545 F.3D 685, 690 (8TH CIR 2008);
25 DURAN V. ANAYA, 642 F. SUPP. 510, 527 (D.W.M. 1986) (RESPECT FOR
26 LAW PARTICULARLY BY OFFICIALS RESPONSIBLE FOR THE
27 ADMINISTRATION OF THE STATE'S CORRECTIONAL SYSTEM IS IN ITSELF A
28 MANNER OF THE HIGHEST PUBLIC INTEREST"),

1 III CONCLUSION

2

3 for the foregoing reason, the conclusion
4 should be clear to the court to grant
5 the above motion in it's entirety, instructing
6 defendants to execute DR. ALI medical
7 plan; ~~physical therapy~~ to see an
8 outside physician.
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14 DATED this 17 day of September 2024

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Without prejudice
BARRY RASHAD HARRIS

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