

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

MINISTER TIMOTHY LUTHER McNAIR,

Case No. 2:16-cv-00871-SB

Plaintiff,

ORDER

v.

STATE OF OREGON, et al.,

Defendants.

HERNÁNDEZ, District Judge:

Plaintiff, an inmate at Snake River Correctional Institution, brings this civil rights action pursuant to 42 U.S.C. § 1983. On February 23, 2017, this Court dismissed Plaintiff's Second Amended Complaint, with leave to amend. Currently before the Court are Plaintiff's Motion for Scheduling Order (ECF No. 24), Motions for Temporary Restraining Order and Preliminary Injunction (ECF No. 25 & 28), and Motion for Extension of Time to file his Third Amended Complaint (ECF No. 27). For the reasons set forth below, this Court denies Plaintiff's Motions for Scheduling Order and for a Temporary Restraining Order and Preliminary Injunction, and grants Plaintiff's Motion for Extension of Time.

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DISCUSSION

Plaintiff seeks a temporary restraining order and preliminary injunction ordering Defendants “to cease and desist” from retaliating and harassing Plaintiff, including “the fabricating of any kind of ‘misconduct reports.’” Pl.’s Mot. for TRO and Prelim. Inj. (ECF No. 25) at 1-2. Additionally, Plaintiff seeks to compel Defendants to (1) provide him “full access” to the prison law library and legal materials; (2) “arrange for the plaintiff to be examined by a qualified orthopedic surgeon and or specialist, and to obtain from that specialist or surgeon an evaluation of the plaintiff’s right shoulder and a prescription for a course of action;” and (3) “restore the plaintiff to his incentive level III status.” Pl.’s Mot. for TRO and Prelim. Inj. (ECF No. 28) at 1-3.

As noted above, this Court dismissed Plaintiff’s Second Amended Complaint for failure to comply with Fed. R. Civ. P. 8(a) and 10(b). Order (ECF No. 21). Plaintiff has yet to file a Third Amended Complaint. Plaintiff therefore has not demonstrated, at this juncture, a likelihood of success on the merits or that there are serious questions going to the merits of his claims. Accordingly, this Court denies Plaintiff’s Motions for a Temporary Restraining Order and Preliminary Injunction. *See Nat’l Inst. of Family and Life Advocates v. Harris*, 839 F.3d 823, 834 (9th Cir. 2016) (setting forth standards for preliminary injunctions).

Additionally, this Court denies Plaintiff’s Motion for a Scheduling Order to expedite the resolution of this case. The Court will issue the appropriate scheduling order in the event that Plaintiff files a Third Amended Complaint which survives screening pursuant to 28 U.S.C. § 1915(e)(2), and the Defendants are served with the Third Amended Complaint or waive service. Finally, this Court grants Plaintiff’s Motion for Extension to file his Third Amended Complaint, and extends the deadline to May 23, 2017.


CONCLUSION

Based on the foregoing, this Court denies Plaintiff's Motions for a Scheduling Order (ECF No. 24) and for a Temporary Restraining Order and Preliminary Injunction (ECF Nos. 25 & 28). This Court grants Plaintiff's Motion for Extension of Time (ECF No. 27). Plaintiff shall file his Third Amended Complaint on or before May 23, 2017.

Plaintiff is advised that failure to file a Third Amended Complaint, using the Court's form complaint, shall result in the dismissal of this proceeding.

IT IS SO ORDERED.

DATED this 17 day of March, 2017.



Marco A. Hernández
United States District Judge