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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 DARRYL W. RISER,

8 Plaintiff,

9 v.

10 WASHINGTON STATE
11 UNIVERSITY, DON HOLBROOK,
12 BRIAN ALLAN DIXON, and RANDI
13 N. CROYLE,

Defendants.

NO: 2:18-CV-0119-TOR

ORDER DENYING PLAINTIFF'S
REQUEST FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION

14 BEFORE THE COURT is Plaintiff Darryl W. Riser's Motions for
15 Temporary Restraining Order and a Preliminary Injunction (ECF Nos. 3; 19) filed
16 April 6, 2018 and April 26, 2018, respectively. The motions were submitted for
17 consideration without oral argument. The Court has reviewed the record and files
18 herein, and is fully informed. For the reasons discussed below, the Motions are
19 **denied.**

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ORDER DENYING PLAINTIFF'S REQUEST FOR TEMPORARY
RESTRAINING ORDER AND PRELIMINARY INJUNCTION ~ 1

1 Pursuant to Federal Rule of Civil Procedure 65, a district court may (1)
2 “issue a preliminary injunction only on notice to the adverse party” or (2) “issue a
3 temporary restraining order without written or oral notice to the adverse party or its
4 attorney only if: (A) specific facts in an affidavit or a verified complaint clearly
5 show that immediate and irreparable injury, loss, or damage will result to the
6 movant before the adverse party can be heard in opposition; and (B) the movant’s
7 attorney certifies in writing any efforts made to give notice and the reasons why it
8 should not be required.” “A plaintiff seeking a preliminary injunction must
9 establish that he is likely to succeed on the merits, that he is likely to suffer
10 irreparable harm in the absence of preliminary relief, that the balance of equities
11 tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat.*
12 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

13 First, Plaintiff has not met the prerequisites for requesting a temporary
14 restraining order. Plaintiff has not provided a certification describing any effort to
15 give notice to the Defendants, nor was there any explanation as to why notice
16 should not be required. Plaintiff’s request for a temporary restraining order thus
17 must be **denied**.

18 Second, Plaintiff has not demonstrated a likelihood of success in his request
19 for a preliminary injunction. Although Plaintiff was assigned whistleblower
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1 status,¹ Plaintiff has not submitted any evidence supporting his assertion that he
2 was wrongly terminated for his whistleblower activities,² which appears to be
3 limited to criticisms of supervisors and other employees.³ Rather, the evidence
4 submitted so far appears to support WSU's decision to terminate Plaintiff for cause
5 and that Plaintiff was accorded adequate notice and an opportunity to respond
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8 ¹ Pursuant to Revised Code of Washington § 42.52.410, a state employee who
9 files a complaint with the appropriate ethics board shall be afforded the protection
10 afforded to a whistleblower under §§ 42.40.050 and 49.60.210(2), subject to the
11 limitations of §§ 42.40.035 and 42.40.910.

12 ² See ECF No. 19-9 (WSU Office of Equal Opportunity finding Plaintiff's
13 claims of discrimination and retaliation were unfounded).

14 ³ Plaintiff repeatedly states that he has filed a race discrimination charge, *see*,
15 *e.g.*, ECF No. 19 at 3, 5, 12, but Plaintiff has not explained what racial
16 discrimination occurred, and the charging document (dated November 30, 2017),
17 ECF No. 19-2, does not include any detail, either. Further, Plaintiff has not
18 submitted a "Notice of Right to Sue" from the Equal Employment Opportunity
19 Commission, as is required before filing suit for work-place race discrimination.
20 *Waters v. Heublein, Inc.*, 547 F.2d 466, 468 (9th Cir. 1976).

1 despite Plaintiff's status as an at-will employee,⁴ bearing in mind that "discharge of
2 a public employee whose position is terminable at the will of the employer"
3 generally does not implicate the due process clause because the employee has no
4 property interest in the position.⁵ *Bishop v. Wood*, 426 U.S. 341, 348 (1976);
5 *Clements v. Airport Auth. of Washoe Cty.*, 69 F.3d 321, 331 (9th Cir. 1995).

6 Plaintiff's request for a preliminary injunction thus must be **denied**.

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14 ⁴ *See, e.g.*, ECF Nos. 18-5 (notice of potential disciplinary action: termination
15 for cause); 18-9 (termination letter); 18-30 (notice of counseling re: work-place
16 deficiencies); 18-34 (WSU review of termination action); 18-37 (review of OEO
17 final closing document); 19-9 (Office of Equal Opportunity closing document); 19-
18 11 (WSU review of Office of Equal Opportunity closing document).

19 ⁵ Plaintiff also references an unlawful search, *see, e.g.*, ECF No. 19 at 5, but
20 this has no bearing on the request for extraordinary relief.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 Plaintiff's Motions for Temporary Restraining Order and a Preliminary
3 Injunction (ECF Nos. 3; 19) are **DENIED**.

4 The District Court Executive is directed to enter this Order and furnish
5 copies to the parties.

6 DATED May 9, 2018.



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Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge