

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Turner v. Singh

No. 2:23-cv-00954 DC SCR P (E.D. Cal. Aug. 14, 2025) · No. 2:23-cv-00954 DC SCR P · Decided August 14,
2025

OPINION

(PC) Turner v. Singh

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 LAFONZO R. TURNER, No. 2:23-cv-00954 DC SCR P

12 Plaintiff,

13 v. FINDINGS & RECOMMENDATIONS

14 V. SINGH, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding pro se with a
civil rights action under 42 U.S.C. § 18 1983. Plaintiff has filed an ex parte “Imminent Danger
Motion,” which the undersigned 19 construes as a motion for temporary restraining order
(“TRO”), seeking return of his durable 20 medical equipment (“DME”). (ECF No. 56.) Because
plaintiff has not shown that he is likely to 21 suffer irreparable harm, the undersigned
recommends that plaintiff’s motion be denied.

22 BACKGROUND

23 Plaintiff is proceeding on his first amended complaint (“FAC”) filed on April 1, 2024. 24 (ECF
No. 24.) The FAC alleges that throughout 2019, prison officials at the California Health 25 Care
Facility confiscated his medically authorized shoes and other DME in retaliation for his 26
lawsuits and appeals. (Id.) Plaintiff alleges he is entitled to the DME pursuant to a March 2018 27
settlement agreement that resolved a civil rights action that he filed in the Northern District of 28
California. (Id. at 1-2.) 1 On October 4, 2024, the undersigned screened the FAC and found it
stated a cognizable 2 First Amendment retaliation claim against defendants Singh and Willis and a
cognizable 3 Americans with Disabilities Act claim against defendants Singh, Willis, and
Williams, but did not 4 state any other claims. (ECF No. 30.) Plaintiff was given the option of
proceeding on his 5 cognizable claims or amending his FAC. (Id.) Plaintiff elected to proceed on
the FAC as 6 screened. (ECF No. 38.) 7 After defendants returned service, the undersigned stayed
the proceedings to allow the 8 parties to engage in post-screening settlement discussions. (ECF
No. 46). Defendants filed an 9 answer on July 30, 2025, after the stay was lifted. (ECF No. 54.)
The case is currently in 10 discovery.¹ (ECF No. 55.)

11 PLAINTIFF'S TRO MOTION

12 In his TRO motion, plaintiff alleges that his walker and knee braces were taken on or 13 about March 6, 2023, without medical justification. (ECF No. 56 at 1.) He has fallen three times 14 since then, injuring his back, hips, shoulder, and neck. (Id.) The absence of his DME is also 15 causing atrophy pain, more severe spasming, and overall weakness in his lower extremities. (Id.) 16 Plaintiff alleges that defendants are denying his DME in violation of the March 2018 17 settlement agreement and against doctor's prescription. (ECF No. 56 at 2.) Their retaliatory 18 actions have left plaintiff confined to a wheelchair. (Id.) Plaintiff seeks an injunction ordering 19 the Kern Valley State Prison to provide him with his approved DME without a reevaluation. (Id.)

20 LEGAL STANDARD

21 A TRO is an extraordinary remedy that may only be granted if the moving party satisfies 22 one of two legal standards. A plaintiff seeking a TRO must generally establish all four of the 23 following elements: (1) likely success on the merits of his underlying case; (2) he is likely to 24 suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his 25 favor; and (4) an injunction is in the public interest. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 26 27 1 On June 16, 2025, plaintiff filed a motion to enforce the aforementioned March 2018 settlement agreement. (ECF No. 50.) The undersigned's findings and recommendations that the motion be 28 denied are pending before the assigned district judge. (ECF No. 52.) 1 (9th Cir. 2015). A plaintiff may also be entitled to a TRO by showing serious questions going to 2 the merits, irreparable harm, and a balance of equities that tips strongly in the plaintiff's favor. 3 All. For the *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

4 DISCUSSION

5 Plaintiff has not shown that he is likely to suffer irreparable harm in the absence of a 6 TRO. As explained below, the limited evidence before the undersigned is stale and does not 7 demonstrate an immediate, irreparable harm that warrants the extraordinary remedy of a TRO. 8 Under Rule 65 of the Federal Rules of Civil Procedure, a court may issue a TRO without 9 written or oral notice to the adverse party or its attorney "only if ... specific facts in an affidavit 10 or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will 11 result to the movant before the adverse party can be heard in opposition[.]" Fed. R. Civ. P. 12 65(b)(1)(A); see also Local Rule 231(c)(4) (requiring "an affidavit in support of the existence of 13 an irreparable injury"). Here, plaintiff did not submit a supporting affidavit with his TRO motion. 14 The TRO motion itself is unverified and does not include any dates or other specific facts that 15 would allow the court to infer that he is facing an imminent or immediate harm.² 16 The undersigned will accept plaintiff's verified FAC as a supporting affidavit. See *Right 17 to Life of Cent. California v. Bonta*, 562 F. Supp. 3d 947, 951 n.1 (E.D. Cal. 2021) ("A verified 18 complaint may be treated as an affidavit [under Rule 65] to the extent that the complaint is based 19 on personal knowledge and sets forth facts admissible in evidence and to which the affiant is 20 competent to testify.") (citing *Lew v. Kona Hosp.*, 754 F.2d 1420, 1423 (9th Cir. 1985)). 21 However, the events

underlying the FAC occurred in 2019, making the FAC's allegations far too stale to show current irreparable harm. Federal courts will not interfere with state government operations "in the absence of facts showing an immediate threat of substantial injury." *Midgett v. Tri-Cnty. Metro. Transp. Dist. of Oregon*, 254 F.3d 846, 850 (9th Cir. 2001) (citation omitted) (emphasis added). In sum, aside from the vague allegations in the unverified TRO motion itself, plaintiff's TRO motion is also procedurally deficient in that it lacks certification as to plaintiff's efforts to give defendants notice. See Fed. R. Civ. P. 65(b)(1)(B); Local Rule 231(c)(5). 1 || provided no evidence that he is likely to suffer irreparable harm. "A plaintiff must do more than 2 || merely allege imminent harm sufficient to establish standing; a plaintiff must demonstrate 3 || immediate threatened injury as a prerequisite to preliminary injunctive relief." *Caribbean Marine 4 || Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citation omitted) (emphasis in 5 || original). Finding no showing irreparable harm, the undersigned need not the address the 6 || remaining TRO factors. See *Herb Reed Enterprises, LLC v. Fla. Entertainment Mgmt. Inc.*, 736 7 || F.3d 1239, 1251 (9th Cir. 2013) (declining to address remaining factors where the "irreparable 8 || harm" requirement was not met). 9 Accordingly, it is recommended that plaintiff's TRO motion be denied. The denial is 10 || without prejudice, meaning that plaintiff may bring a renewed motion. Plaintiff is advised that a 11 || future TRO motion must comply with the requirements of Rule 65 of the Federal Rules of Civil 12 || Procedure and Local Rule 231, including the requirement that the TRO motion be supported by 13 || evidence showing an immediate and irreparable injury.

14 CONCLUSION

15 Accordingly, IT IS HEREBY RECOMMENDED that plaintiffs ex parte "Imminent 16 || Danger Motion," construed as TRO motion (ECF No. 56), be denied without prejudice. 17 These findings and recommendations are submitted to the United States District Judge 18 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21) 19 || days after being served with these findings and recommendations, any party may file written 20 || objections with the court and serve a copy on all parties. Such a document should be captioned 21 || "Objections to Magistrate Judge's Findings and Recommendations." Any response to the 22 || objections shall be served and filed within fourteen days after service of the objections. The 23 || parties are advised that failure to file objections within the specified time may waive the right to 24 || appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). 25 || DATED: August 14, 2025 mk 27

SEAN C. RIORDAN

28 UNITED STATES MAGISTRATE JUDGE