

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

Eswaran v. McTighe

Eswaran · No. 2:25-cv-02282-DAD-CKD (PS) · Decided August 14, 2025

OPINION

(PS) Eswaran v. McTighe

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 SURESH ESWARAN, No. 2:25-cv-02282-DAD-CKD (PS)

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

DENYING PLAINTIFF’S MOTION FOR

14 ROBERT MCTIGHE TEMPORARY RESTRAINING ORDER

15 Defendants. (ECF No. 2) 16 17 18 On August 12, 2025, pro se plaintiff Suresh Eswaran filed a
fee-paid civil complaint and a 19 motion for a temporary restraining order under Federal Rule of
Civil Procedure 65(b). (ECF Nos. 20 1, 2.) The presiding district judge referred the motion to the
undersigned for issuance of findings 21 and recommendations on August 12, 2025. (ECF No. 8.)
For the reasons set forth below, it is 22 recommended that plaintiff’s motion for temporary
restraining order be denied. 23 I. Background 24 Plaintiff initiated this action on August 12, 2025
with a fee-paid complaint against 25 Defendant Colonel Robert McTighe, in his official capacity
as the District Commander of the 26 United States Army Corps of Engineers, Sacramento District.
(ECF No. 1.) Plaintiff brings claims 27 under the National Environmental Policy Act, the
Administrative Procedure Act, the Public Trust 28 Doctrine, and for failure to provide adequate
information against Defendant. (Id.) 1 Plaintiff alleges that he lives adjacent to the American
River, and is harmed by “Project 2 3B’s” environmental impacts. (Id. ¶ 2.) Plaintiff states that
Project 3B “involves removing 600+ 3 mature trees and installing artificial revetments, threatening
the American River’s ecosystem.” (Id. 4 ¶ 4.) Plaintiff states that the U.S. Army Corps of
Engineers has already authorized and removed 5 approximately 500 mature trees along the
American River Parkway, causing ecological damage. 6 (Id. ¶5.) According to plaintiff, the U.S.
Army Corps of Engineers has not adequately disclosed, 7 analyzed, or mitigated the
environmental impacts of vegetation removal. (Id. ¶ 6; see id. ¶ 8.) 8 Also on August 12, 2025,
plaintiff filed the motion for a temporary restraining order 9 presently before the undersigned.1

(ECF No. 2.) Plaintiff seeks to prevent Defendant in his 10 official capacity, and all individuals acting in concert, from “commencing or continuing any 11 operations, contracting, staging, surveying, enforcement, or physical alterations associated with 12 Project 3B along the American River water system.” (Id. ¶ 1.)

13 II. Legal Standard 14 The purpose of a temporary restraining order under Rule 65(b) of the Federal Rules of 15 Civil Procedure is to preserve the status quo and to prevent irreparable harm “so long as is 16 necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 17 U.S. 423, 439 (1974). In determining whether to issue a temporary restraining order, a court relies 18 on the factors that guide the evaluation of a request for preliminary injunctive relief: whether the 19 moving party is (1) “likely to succeed on the merits,” (2) “likely to suffer irreparable harm in the 20 absence of preliminary relief,” (3) “the balance of equities tips in [its] favor,” and (4) “an 21 injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 22 (2008); see also *Stuhlbarg Int’l. Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th

23 Cir. 2001) (stating the analysis for temporary restraining orders and preliminary injunctions is 24 “substantially identical”). 25 1 On August 12, 2025, plaintiff filed a document titled “notice re assault” where he alleges that 26 he was assaulted while attempting to serve defendant. (ECF No. 7.) In this document he states, 27 “please strongly consider a TRO for Mr. Adams-myself please or some order abstaining US army Corps from me personally.” (Id.) To the extent plaintiff is seeking another temporary restraining 28 order, this is not the proper way to make this request. 1 Courts within this circuit may also consider a request for a temporary restraining order 2 using a “sliding scale” test in which “a stronger showing of one element may offset a weaker 3 showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 4 2011). “[W]hen plaintiffs establish that the balance of hardships tips sharply in their favor, there 5 is a likelihood of irreparable injury, and the injunction is in the public interest, they need only 6 show ‘serious questions’ on the merits.” *Where Do We Go Berkeley v. California Dep’t of 7 Transp.*, 32 F.4th 852, 859 (9th Cir. 2022) (citing *Alliance for the Wild Rockies*, 632 F.3d at 8 1135). 9 However, likelihood of success on the merits is the most important Winter factor, and it is 10 relevant to the court’s evaluation of the other factors. See *Baird v. Bonta*, 81 F.4th 1036, 1044 11 (9th Cir. 2023). Without showing a likelihood of success on the merits, plaintiff also does not 12 establish that the balance of equities tips in his favor, or that an injunction is in the public interest. 13 See *id.*; *Winter*, 555 U.S. at 20-21. 14 The Eastern District of California’s local rules impose specific requirements on those who 15 request a temporary restraining order. See Local Rule 231. Among other things, these rules 16 require “actual notice to the affected party and/or counsel” except in “the most extraordinary of 17 circumstances.” Local Rule 231(a). “Appropriate notice would inform the affected party and/or 18 counsel of the intention to seek a temporary restraining order, the date and time for hearing to be 19 requested . . . , and the nature of the relief to be requested.” *Id.* 20 A court may issue a temporary restraining order “without written or oral notice

to the 21 adverse party” only if 22 (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to 23 the movant before the adverse party can be heard in opposition; and 24 (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required. 25 26 Fed. R. Civ. P. 65(b)(1). 27 When deciding whether to issue a temporary restraining order, the court may rely on 28 declarations, affidavits, and exhibits, among other things. See *Johnson v. Couturier*, 572 F.3d 1 1067, 1083 (9th Cir. 2009). This evidence need not conform to the standards that apply at 2 summary judgment or trial. *Id.*; *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 3 1984). 4 III. Analysis 5 A. Plaintiff’s Motion Is Procedurally Deficient 6 As a preliminary matter, plaintiff has not satisfied the requirements of Federal Rule of 7 Civil Procedure 65 or Local Rule 231 governing applications for temporary restraining orders. 8 First, plaintiff has not filed a brief on all relevant legal issues presented by the motion. Second, 9 while plaintiff filed a proposed order (ECF No. 2 at 17), the proposed order does not contain a 10 provision for a bond, or blanks for fixing the date for the filing of responsive papers, the amount 11 of the bond, if any, as required by this Court’s Local Rules (see Local Rule 231(c)(6)-(7)). Third, 12 the proposed order does not notify the affected party of the right to apply to the Court for 13 modification or dissolution on two days’ notice or such shorter notice as the Court may allow. See 14 Local Rule 231(c)(8). Fourth, plaintiff has not filed an “affidavit detailing notice, or efforts to 15 effect notice to the affected parties or counsel or showing good cause why notice should not be 16 given[.]” Local Rule 231(c)(5). While plaintiff responded in the temporary restraining order 17 checklist that there was notice to the affected party (ECF No. 2-1at 1), plaintiff has not provided 18 an affidavit detailing this notice or describing the efforts plaintiff took to effect notice. Plaintiff 19 also stated in the motion that notice to Defendant is not practicable “due to imminent 20 commencement of irreversible operations, evidence by helicopter airlifts on August 6, 2025,” 21 indicating notice was not provided. (ECF No. 2 at 1.) The motion for a temporary restraining 22 order is therefore procedurally defective. See Fed. R. Civ. P. 65(b)(1); Local Rule 231. 23 Courts regularly deny temporary restraining orders for failing to comply with the stringent 24 requirements of Rule 65(b)(1), including those sought by pro se plaintiffs. See *Reno Air Racing 25 Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (“courts have recognized very few 26 circumstances justifying the issuance of an ex parte [temporary restraining order]”); *Abdel-Malak 27 v. Doe*, 2020 WL 5775818, at *1 (C.D. Cal. Feb. 20, 2020) (denying temporary restraining order 28 sought by pro se plaintiff for failure to satisfy Rule 65(b)’s “strict requirements”). In addition, 1 plaintiff’s failure to comply with the Local Rules’ requirements for temporary restraining orders 2 is sufficient justification to deny the motion. See *Nible v. Macomber*, 2024 WL 2133319, at *2 3 (E.D. Cal. May 13, 2024) (denying temporary restraining order sought by pro se plaintiff as 4 procedurally deficient); see, e.g., *Tri-Valley CAREs v. U.S. Dep’t of Energy*, 671 F.3d 1113, 5 1131 (9th Cir. 2012) (“Denial of a motion as the result of a failure to comply with local rules is 6 well within a district court’s discretion.”). 7 Therefore, the

Court will recommend denial of the temporary restraining order motion 8 based on these procedural deficiencies. 9 B. Plaintiff Has Not Clearly Shown a Likelihood of Success of the Merits 10 The Court also examines the first and most important Winter factor: likelihood of success 11 on the merits. Because the first Winter factor of likelihood of success is a threshold inquiry and 12 the most important factor, a “court need not consider the other factors” if a movant fails to show a 13 likelihood of success on the merits. *Baird*, 81 F.4th at 1040 (citation omitted); see *Garcia v. 14 Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). Although pro se pleadings are liberally 15 construed, see *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), they are still required to conform 16 to the Federal Rules of Civil Procedure. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995). 17 Plaintiff has not demonstrated likelihood of success on the merits. Plaintiff brings four 18 causes of action, but does not furnish the Court with any legal authority or evidence supporting 19 plaintiff’s claims. Plaintiff’s allegations are conclusory and do not demonstrate that he is likely to 20 succeed on the merits. Plaintiff states that the U.S. Army Corps of Engineers violated the 21 National Environmental Policy Act by failing to adequately analyze climate impact, evaluate 22 natural alternative, and consider cumulative effects, but does not provide sufficient facts or details 23 supporting these claims. (See ECF No. 1 ¶ 8.) Plaintiff also states that “[a]ctions are arbitrary 24 under [the Administrative Procedure Act], as projects fail to reduce flood risk despite claims: 25 Sacramento remains among the nation’s most at-risk metropolitan areas with aging levees and 26 persistent vulnerabilities” but again does not provide sufficient facts or details supporting these 27 claims. (See *id.* ¶ 9.) The Court therefore also recommends denying plaintiff’s motion for failing 28 to establish the likelihood of success on the merits. 1 C. Plaintiff Does Not Establish Likelihood of Irreparable Harm 2 Plaintiff also does not establish the likelihood that plaintiff will suffer irreparable harm in 3 the absence of preliminary relief. Plaintiff requests relief to prevent defendant in his official 4 capacity and others associated with him from “commencing or continuing any operations, 5 contracting, staging, surveying, enforcement, or physical alterations associated with Project 3B 6 along the American River water system.” (ECF No. 2 ¶ 1.) Plaintiff states that there is “imminent 7 commencement of irreversible operations, evidenced by helicopter airlifts on August 6, 2025.” 8 (ECF No. 2 at 1.) Plaintiff also states that environmental injury has already occurred and “again is 9 imminent and irreversible” because “mature trees and riparian habitat cannot be replaced within 10 human lifespans.” (*Id.* ¶ V.2.) However, nothing in the motion suggests plaintiff is at risk of any 11 irreparable harm in the absence of preliminary relief. Plaintiff states that he contacted the U.S. 12 Army Corps of Engineers on January 18, 2024—almost nineteen months ago. (ECF No. 2 at 1.) 13 The letter plaintiff attached to the complaint is also dated January 2024. (ECF No. 1 at 4.) This 14 nineteen-month delay indicates that any potential injury is not immediate. A plaintiff must 15 demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief. *Los 16 Angeles Mem’l Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197, 1201 (9th Cir. 17 1980). Here, plaintiff’s motion does not allege the type of irreparable harm necessary for a 18 preliminary

injunction. See *FDIC v. Garner*, 125 F.3d 1272, 1279 (9th Cir. 1997) (the threat of injury “must be imminent, not remote or speculative” (citation omitted)), cert. denied, *Garner v. FDIC*, 523 U.S. 1020 (1998); *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (“Speculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction.”). IV. Conclusion and Recommendation For the reasons set forth above, IT IS HEREBY RECOMMENDED that plaintiff’s motion for temporary restraining order (ECF No. 2) be DENIED. These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections shall be served on all parties and filed with the court within seven (7) days after service of the objections. Failure to file objections within the specified time may waive the right to appeal the District court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. [REDACTED]* 951 F.2d 1153, 1156-57 (9th Cir. 1991). 7 | Dated: 08/13/25 / hie MN fe Ho. AG

CAROLYN K DELANEY?

9 UNITED STATES MAGISTRATE JUDGE

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