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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARCUS R. ELLINGTON,

Plaintiff,

v.

CLARK, et al.,

Defendants.

CASE NO. 1:09-cv-00054-OWW-DLB PC

ORDER VACATING MAY 14, 2010 ORDER

(Doc. 57)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF’S MOTIONS
FOR INJUNCTIVE RELIEF BE DENIED

(Docs. 44, 59)

OBJECTIONS DUE WITHIN 20 DAYS

_____/

Plaintiff Marcus R. Ellington (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). On May 27, 2010, Plaintiff filed a motion for emergency relief due to irreparable harm and imminent danger. (Doc. 59.) Plaintiff requests that he be granted access to his walker, and provided with medical care. Plaintiff is currently incarcerated at Kern Valley State Prison. The Court construes this as a motion for preliminary injunction.

On May 14, 2010, the Court issued an order denying Plaintiff’s December 24, 2009 motion. (Doc. 57.) On further review, Plaintiff’s motion was for preliminary injunctive relief. Because both parties have not consented to magistrate judge jurisdiction in this action, the Court HEREBY VACATES its May 14, 2010 order. The Court issues the following Findings and Recommendations regarding Plaintiff’s December 24, 2009 and May27, 2010 motions.

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the

1 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*
2 *Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 374 (2008) (citations omitted). The
3 purpose of preliminary injunctive relief is to preserve the status quo or to prevent irreparable
4 injury pending the resolution of the underlying claim. *Sierra On-line, Inc. v. Phoenix Software,*
5 *Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

6 Federal courts are courts of limited jurisdiction, and as a preliminary matter, the court
7 must have before it an actual case or controversy. *City of Los Angeles v. Lyons*, 461 U.S. 95,
8 102, 103 S. Ct. 1660, 1665 (1983); *Valley Forge Christian Coll. v. Ams. United for Separation of*
9 *Church and State, Inc.*, 454 U.S. 464, 471, 102 S. Ct. 752, 757-58 (1982). If the court does not
10 have an actual case or controversy before it, it has no power to hear the matter in question.
11 *Lyons*, 461 U.S. at 102. Thus, “[a] federal court may issue an injunction [only] if it has personal
12 jurisdiction over the parties and subject matter jurisdiction over the claim; it may not attempt to
13 determine the rights of persons not before the court.” *Zepeda v. United States Immigration*
14 *Service*, 753 F.2d 719, 727 (9th Cir. 1985).

15 In both motions, Plaintiff requests injunctive relief against Kern Valley State Prison
16 (“KVSP”). The only Defendants in this action are or were employed at California Substance
17 Abuse Treatment Facility (“SATF”). Plaintiff is currently incarcerated at KVSP. KVSP and
18 KVSP prison officials are not parties to this action.¹ The Court thus lacks jurisdiction in this
19 action to determine the rights of persons not before the Court. *Id.* Accordingly, it is HEREBY
20 RECOMMENDED that Plaintiff’s motions for injunctive relief, filed December 24, 2009 and
21 May 27, 2010, be DENIED.

22 These Findings and Recommendations will be submitted to the United States District
23 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty**
24 **(20) days** after being served with these Findings and Recommendations, the parties may file
25 written objections with the court. The document should be captioned “Objections to Magistrate
26

27 ¹ In a separate objections to the denial of Plaintiff’s previous motion, Plaintiff contends that the Court has
28 jurisdiction over the Director of the CDCR, who has authority over all California state prisons. (Doc. 58.) While it
may be true that the Director does have authority over KVSP, the Director is not a party to this action, and the Court
thus does not have jurisdiction over the Director. Plaintiff’s argument is moot.

1 Judge's Findings and Recommendations." The parties are advised that failure to file objections
2 within the specified time may waive the right to appeal the District Court's order. *Martinez v.*
3 *Ylst*, 951 F.2d 1153 (9th Cir. 1991).

4 IT IS SO ORDERED.

5 Dated: June 3, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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