

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

KAVIN M. RHODES,  
  
Plaintiff,  
  
v.  
  
M. ROBINSON, et al.,  
  
Defendants.

CASE NO. 1:02-CV-05018-LJO-DLB PC  
  
ORDER REGARDING CASE STATUS  
UPDATE (DOC. 222)  
  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING PLAINTIFF’S MOTION  
FOR INJUNCTIVE RELIEF BE DENIED  
(DOC. 214)  
  
OBJECTIONS DUE WITHIN TWENTY-ONE  
DAYS

Plaintiff Kavin M. Rhodes (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeded to trial on May 20, 2008. Judgment was entered on May 22, 2008, and this action was closed. Plaintiff appealed, *inter alia*, the dismissal of other claims from this action, and on December 13, 2010, the Court of Appeals for the Ninth Circuit granted Plaintiff’s appeal in part, reversing and remanding for further proceedings. On December 15, 2010, the District Judge reopened this action. Pending before the Court is Plaintiff’s motion for injunctive relief, filed October 12, 2010, and Plaintiff’s motion regarding case status, filed January 18, 2011.

**I. Motion For Injunctive Relief**

“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 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v.*

1 *Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008) (citations omitted).

2 At the time Plaintiff filed his motion for injunctive relief, this action was closed and on  
3 appeal. The District Court was thus divested of jurisdiction to consider any injunctive relief. *See*  
4 *United States v. Sadler*, 480 F.3d 932, 941 (9th Cir. 2007); *cf. Ruby v. Secretary of the United*  
5 *States Navy*, 365 F. 2d 385, 389 (9th Cir. 1966) (en banc) (exceptions for clearly deficient  
6 appeals). This action has since been remanded from the Court of Appeals, and is reopened.  
7 Thus, the Court has jurisdiction to consider the motion.<sup>1</sup>

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

16 Plaintiff’s motion for injunctive relief concerns events at Kern Valley State Prison. This  
17 action, however, concerns events which took place at California Correctional Institution. Prison  
18 officials at Kern Valley State Prison are not before this Court. Thus, the Court lacks jurisdiction  
19 to grant Plaintiff’s motion for injunctive relief.

## 20 **II. Motion For Status Update**

21 Plaintiff seeks a status update regarding this action. Plaintiff contends that the December  
22 15, 2010 Order to re-open this action was not sent to Kern Valley State Prison, where he is  
23 currently incarcerated, but sent to the Fresno Parole Division. This appears to be a clerical error.  
24 Plaintiff’s address has been updated.

---

26 <sup>1</sup> The Court notes that Plaintiff has filed a notice of appeal in this action on March 11, 2011. “When a  
27 Notice of Appeal is defective in that it refers to a non-appealable interlocutory order, it does not transfer jurisdiction  
28 to the appellate court, and so the ordinary rule that the district court cannot act until the mandate has issued on the  
appeal does not apply.” *Nascimento v. Dummer*, 508 F.3d 905, 908 (9th Cir. 2007). The Court thus has jurisdiction  
to adjudicate Plaintiff’s motion.

1 **III. Conclusion**

2 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff's motion for  
3 injunctive relief, filed October 12, 2010, be DENIED.

4 These Findings and Recommendations are submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **twenty-one**  
6 **(21) days** after being served with these Findings and Recommendations, the parties may file  
7 written objections with the court. Such a document should be captioned "Objections to  
8 Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file  
9 objections within the specified time may waive the right to appeal the District Court's order.  
10 *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

11  
12 IT IS SO ORDERED.

13 **Dated: March 23, 2011**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE