



1 **II. PRELIMINARY INJUNCTION**

2 **A. Legal Standard**

3 The purpose of a preliminary injunction is to preserve the status quo if the balance of equities  
4 so heavily favors the moving party that justice requires the court to intervene to secure the positions until  
5 the merits of the action are ultimately determined. University of Texas v. Camenisch, 451 U.S. 390, 395  
6 (1981). A preliminary injunction is available to a plaintiff who “demonstrates either (1) a combination  
7 of probable success and the possibility of irreparable harm, or (2) that serious questions are raised and  
8 the balance of hardship tips in its favor.” Arcamuzi v. Continental Air Lines, Inc., 819 F. 2d 935, 937  
9 (9th Cir. 1987). Under either approach the plaintiff “must demonstrate a significant threat of irreparable  
10 injury.” Id. Also, an injunction should not issue if the plaintiff “shows no chance of success on the  
11 merits.” Id. At a bare minimum, the plaintiff “must demonstrate a fair chance of success of the merits,  
12 or questions serious enough to require litigation.” Id.

13 Federal courts are courts of limited jurisdiction, and as a preliminary matter, the court must have  
14 before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103 S.Ct. 1660,  
15 1665 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454  
16 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982); Jones v. City of Los Angeles, 444 F.3d 1118, 1126 (9th  
17 Cir. 2006). If the court does not have an actual case or controversy before it, it has no power to hear the  
18 matter in question. Id.

19 **B. Discussion**

20 In his motion for injunctive relief, plaintiff requests a court order directing the CDCR to ensure  
21 his future rights to personal property and access to the law library, and a court order declaring his rights,  
22 the CDCR’s obligations, that SVSP appeals coordinators caused administrative remedies to be  
23 unavailable to acted against him, and that he will suffer irreparable injury if required to further exhaust  
24 administrative remedies. This action currently proceeds on plaintiff’s second amended complaint filed  
25 November 13, 2008, which awaits screening by the court pursuant to 28 U.S.C. § 1915. The court has  
26 made a cursory review of the second amended complaint and finds that plaintiff brings claims that  
27 personnel at the California Substance Abuse Treatment Facility, where plaintiff was previously  
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1 incarcerated, violated his rights under the First and Fourteenth Amendments when they retaliated against  
2 him, interfered with his access to the courts, obstructed his incoming and outgoing mail, and failed to  
3 follow correct prison grievance procedures. Because an order directing the CDCR to ensure plaintiff's  
4 rights "from now on" or a declaratory order regarding plaintiff's rights, the CDCR's responsibilities, past  
5 conduct by SVSP personnel, and plaintiff's possible injuries if he is required to exhaust administrative  
6 remedies would not remedy any of the claims upon which this action proceeds, the court lacks  
7 jurisdiction to issue the orders sought by plaintiff. Therefore, the court finds that plaintiff's motion must  
8 be denied.

9 **III. CONCLUSION**

10 Based on the foregoing, the court HEREBY RECOMMENDS that plaintiff's motion for  
11 injunctive relief, filed August 25, 2008, be DENIED.

12 These Findings and Recommendation will be submitted to the United States District Judge  
13 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**  
14 after being served with these Findings and Recommendation, plaintiff may file written objections with  
15 the court. The document should be captioned "Objections to Magistrate Judge's Findings and  
16 Recommendation." Plaintiff is advised that failure to file objections within the specified time may waive  
17 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18  
19 IT IS SO ORDERED.

20 **Dated: January 16, 2009**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE