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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 SERGIO ALEJANDRO GAMEZ,

12 Plaintiff,

13 vs.

14 F. GONZALEZ, et al.,

15 Defendants.
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1:08-cv-01113-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF, OR IN THE
ALTERNATIVE, MOTION TO COMPEL
DEFENDANTS TO SUBMIT
DOCUMENTS FOR *IN CAMERA*
REVIEW, BE DENIED
(Docs. 140, 141.)

OBJECTIONS, IF ANY, DUE WITHIN
TWENTY (20) DAYS

19 **I. RELEVANT PROCEDURAL HISTORY**

20 Sergio Alejandro Gamez ("Plaintiff") is a state prisoner proceeding pro se and in forma
21 pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on
22 August 1, 2008. (Doc. 1.) On February 19, 2009, Plaintiff filed the First Amended Complaint.
23 (Doc. 11.) On February 26, 2009, the court dismissed the First Amended Complaint for failure
24 to state a claim, with leave to amend. (Doc. 12.) On April 1, 2009, Plaintiff filed the Second
25 Amended Complaint. (Doc. 13.)

26 On October 30, 2012, Plaintiff filed a motion to amend the complaint, which was
27 granted by the court on December 19, 2012. (Docs. 120, 128.) On January 14, 2013, Plaintiff
28 filed the Third Amended Complaint. (Doc. 132.) The court screened the Third Amended

1 Complaint pursuant to 28 U.S.C. § 1915A and entered an order on October 3, 2013, requiring
2 Plaintiff to either file a fourth amended complaint, or notify the court of his willingness to
3 proceed with the claims found cognizable by the court, within thirty days. (Doc. 137.) To date,
4 Plaintiff has not filed a fourth amended complaint or notified the court of his willingness to
5 proceed. (Court Record.)

6 On October 24, 2013, Plaintiff filed a motion for preliminary injunctive relief,
7 requesting a court order barring Defendants from further retaliation. (Docs. 140, 141.) In the
8 alternative, Plaintiff requests the court to compel the defendants to submit documents to the
9 court for *in camera* review. Id.

10 **II. PRELIMINARY INJUNCTIVE RELIEF**

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

22 Federal courts are courts of limited jurisdiction, and as a preliminary matter, the court
23 must have before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95,
24 102, 103 S.Ct. 1660, 1665 (1983); Valley Forge Christian Coll. v. Ams. United for Separation
25 of Church and State, Inc., 454 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982); Jones v. City of
26 Los Angeles, 444 F.3d 1118, 1126 (9th Cir. 2006). If the court does not have an actual case or
27 controversy before it, it has no power to hear the matter in question. Id. Thus, “[a] federal
28 court may issue an injunction [only] if it has personal jurisdiction over the parties and subject

1 matter jurisdiction over the claim; it may not attempt to determine the rights of persons not
2 before the court.” Zepeda v. United States Immigration Service, 753 F.2d 719, 727 (9th Cir.
3 1985).

4 **Discussion**

5 By separate order, the court ordered Plaintiff to either file a fourth amended complaint,
6 or notify the court of his willingness to proceed with the claims found cognizable by the court.
7 Plaintiff has not yet responded to the court’s order. Thus, at this juncture, the court does not
8 yet have before it an actual case or controversy, nor does the court have jurisdiction over any of
9 the defendants in this action. Id. Therefore, Plaintiff’s motion for preliminary injunctive relief
10 must be denied.

11 **III. MOTION TO COMPEL DEFENDANTS TO SUBMIT DOCUMENTS FOR IN**
12 **CAMERA REVIEW**

13 In the alternative, Plaintiff requests the court to compel the defendants to submit
14 documents to the court for *in camera* review. As discussed above, at this stage of the
15 proceedings, the court does not yet have jurisdiction over any of the defendants in this action.
16 Id. Therefore, Plaintiff’s motion to compel must also be denied.

17 **IV. CONCLUSION AND RECOMMENDATION**

18 For the reasons set forth above, **IT IS HEREBY RECOMMENDED** that Plaintiff’s
19 motion for preliminary injunctive relief, or in the alternative, motion to compel defendants to
20 submit documents to the court, be denied.

21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty**
23 **(20) days** after being served with these findings and recommendations, the parties may file
24 written objections with the Court. Such a document should be captioned "Objections to
25 Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be
26 served and filed within ten days after service of the objections. The parties are advised that

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1 failure to file objections within the specified time may waive the right to appeal the District
2 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 IT IS SO ORDERED.

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7 Dated: October 25, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE