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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSHUA CANTU,

CASE NO. 1:09-cv-00177-GBC (PC)

Plaintiff,

ORDER DENYING MOTIONS FOR
INJUNCTIVE RELIEF

v.

M. GARCIA,

(ECF No. 36 & 37)

Defendant.

_____ /

ORDER

Plaintiff Joshua Cantu ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. This action is currently proceeding on an excessive force claim raised against Defendant Garcia in Plaintiff's First Amended Complaint, filed July 26, 2010. The Court has ordered service to be effectuated by the United States Marshal, but it has not been completed yet. (ECF No. 35.)

Plaintiff has filed two motions for injunctive relief seeking court orders requiring prison officials to transfer him to a different prison, seeking protective orders, and also seeking injunctive relief. Plaintiff alleges his safety is threatened by his present placement,

1 he has been falsely accused of things, he has been assaulted by prison staff, and he is
2 suffering retaliation by correctional officers. (ECF Nos. 36 & 37.)

3 The legal principles applicable to a request for injunctive relief are well established.
4 To prevail, the moving party must show either a likelihood of success on the merits and the
5 possibility of irreparable injury, or that serious questions are raised and the balance of
6 hardships tips sharply in the movant's favor. See Coalition for Economic Equity v. Wilson,
7 122 F.3d 692, 700 (9th Cir. 1997); Oakland Tribune, Inc. v. Chronicle Publ'g Co., 762 F.2d
8 1374, 1376 (9th Cir. 1985). The two formulations represent two points on a sliding scale
9 with the focal point being the degree of irreparable injury shown. Oakland Tribune, 762
10 F.2d at 1376. "Under any formulation of the test, plaintiff must demonstrate that there
11 exists a significant threat of irreparable injury." Id. In the absence of a significant showing
12 of possible irreparable harm, the court need not reach the issue of likelihood of success
13 on the merits. Id.

14 In cases brought by prisoners involving conditions of confinement, any preliminary
15 injunction "must be narrowly drawn, extend no further than necessary to correct the harm
16 the court finds requires preliminary relief, and be the least intrusive means necessary to
17 correct the harm." 18 U.S.C. § 3626(a)(2).

18 Initially, the principal purpose of preliminary injunctive relief is to preserve the court's
19 power to render a meaningful decision after a trial on the merits. See C. Wright & A. Miller,
20 11 Federal Practice and Procedure, § 2947 (1973). In addition to demonstrating that he
21 will suffer irreparable harm if the court fails to grant the preliminary injunction, plaintiff must
22 show a "fair chance of success on the merits" of his claim. Sports Form, Inc. v. United
23 Press International, Inc., 686 F.2d 750, 754 (9th Cir. 1982), quoting Benda v. Grand Lodge

1 of International Association of Machinists and Aerospace Workers, 584 F.2d 308, 315 (9th
2 Cir. 1979). Implicit in this required showing is that the relief awarded is only temporary and
3 there will be a full hearing on the merits of the claims raised in the injunction when the
4 action is brought to trial.

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6 In addition, as a general rule this court is unable to issue an order against
7 individuals who are not parties to a suit pending before it. Zenith Radio Corp. v. Hazeltine
8 Research, Inc., 395 U.S. 100, 89 S.Ct. 1562, 23 L.Ed.2d 129 (1969).

9 All of the allegations of the motions at bar arise from events that occurred in 2011,
10 well after the 2009 incidents on which this action is based. To the extent the motions are
11 based on claims that are not cognizable as part of the underlying action, they will not be
12 given a hearing on the merits at trial. The pendency of this action does not confer on the
13 Court jurisdiction to issue an order directing that Plaintiff be transferred, because such an
14 order would not remedy the underlying legal claim, which involves Defendant Garcia's past
15 conduct. 18 U.S.C. § 3626(a)(1)(A); Summers v. Earth Island Institute, 555 U.S. 488, 129
16 S.Ct. 1142, 1149, 173 L.Ed.2d 1 (2009); City of Los Angeles v. Lyons, 461 U.S. 95, 101,
17 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983); Mayfield v. United States, 599 F.3d 964, 969 (9th
18 Cir. 2010), cert. denied, ___ U.S. ___, 131 S.Ct. 503, 178 L.Ed.2d 369 (2010).

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21 The motions also appear to implicate Plaintiff's right to access the courts. In Lewis
22 v. Casey, 518 U.S. 343, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996), the United States
23 Supreme Court held that prison inmates have a constitutionally protected right to access
24 the courts to bring civil rights actions to challenge their conditions of confinement and to
25 bring challenges to their criminal convictions. Lewis v. Casey, 518 U.S. at 351. The right
26 of access to the courts "guarantees no particular methodology but rather the conferral of
27

1 a capability-the capability of bringing contemplated challenges to sentences or conditions
2 of confinement before the courts.” Id. at 356. In order to demonstrate a cognizable threat
3 to this right, plaintiff must present evidence that defendants by their acts will prevent him
4 from bringing, or cause him to lose, an actionable claim of this type. Id.
5

6 Plaintiff has not made the required showing on the motions at bar. Specifically, the
7 record before this Court does not support a finding that Plaintiff is threatened with
8 irreparable harm to his ability to litigate this action. The Court notes that there are no
9 pending deadlines for Plaintiff to meet. Service is being effectuated by the USM.

10 For the foregoing reasons, Plaintiff’s motions for injunctive relief should be denied.

11 In accordance with the above, IT IS HEREBY ORDERED that:

- 12
- 13 1. Plaintiff’s September 28, 2011 Motion for Emergency Transfer be DENIED;
 - 14 and
 - 15 2. Plaintiff’s October 3, 2011 Motion for Emergency Transfer and Injunctive
16 Relief be DENIED.

17 IT IS SO ORDERED.

18 Dated: October 10, 2011

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20 UNITED STATES MAGISTRATE JUDGE