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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GERALD A. WEST,

CASE NO. 1:09-cv-01277-GBC (PC)

Plaintiff,

v.

FINDINGS AND RECOMMENDATION
RECOMMENDING DENIAL OF MOTION
FOR INJUNCTIVE RELIEF

FEDERAL BUREAU OF PRISONS, et al.,

(ECF No. 32)

Defendants.

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Plaintiff Gerald A. West ("Plaintiff") is a federal prisoner proceeding pro se and in forma pauperis in this civil rights action. This action proceeds on Plaintiff's Third Amended Complaint, filed August 27, 2010, against Defendants Doe 1, Doe 2, and Doe 3 for failure to protect in violation of the Eighth Amendment. (ECF No. 25.)

Plaintiff filed a Motion for Injunctive Relief on March 24, 2011. (ECF No. 32.) In it, Plaintiff details the facts of this action, subsequent altercations, retaliation, and due process violations, among other things.

"A preliminary injunction is an extraordinary remedy never awarded as of right." Winter v. Natural Resources Defense Council, Inc., 129 S.Ct. 365, 376 (2008) (citation omitted). "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

1 the public interest.” Id. at 374 (citations omitted). An injunction may only be awarded upon
2 a clear showing that the plaintiff is entitled to relief. Id. at 376 (citation omitted) (emphasis
3 added).

4 Federal courts are courts of limited jurisdiction and, in considering a request for
5 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary
6 matter, it have before it an actual case or controversy. City of Los Angeles v. Lyons, 461
7 U.S. 95, 102 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church
8 and State, Inc., 454 U.S. 464, 471 (1982). If the Court does not have an actual case or
9 controversy before it, it has no power to hear the matter in question. Id. “[The] triad of
10 injury in fact, causation, and redressability constitutes the core of Article III’s
11 case-or-controversy requirement, and the party invoking federal jurisdiction bears the
12 burden of establishing its existence.” Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83,
13 103-04 (1998).

14 The standard for a permanent injunction is essentially the same as for a preliminary
15 injunction, with the exception that the plaintiff must show actual success, rather than a
16 likelihood of success. See Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 546 n.
17 12 (1987). However, the Ninth Circuit has recently revived the “serious questions” sliding
18 scale test, and ruled that a preliminary injunction may be appropriate when a plaintiff
19 demonstrates serious questions going to the merits and the balance of hardships tips
20 sharply in plaintiff’s favor. Alliance for the Wild Rockies v. Cottrell, 622 F.3d 1045, 1052-53
21 (9th Cir. 2010).

22 In cases brought by prisoners involving conditions of confinement, the Prison
23 Litigation Reform Act (PLRA) requires that any preliminary injunction “must be narrowly
24 drawn, extend no further than necessary to correct the harm the court finds requires
25 preliminary relief, and be the least intrusive means necessary to correct the harm.” 18
26 U.S.C. § 3626(a)(2). Moreover, where, as here, “a plaintiff seeks a mandatory preliminary
27 injunction that goes beyond maintaining the status quo pendente lite, ‘courts should be
28 extremely cautious’ about issuing a preliminary injunction and should not grant such relief

1 unless the facts and law clearly favor the plaintiff.” Committee of Central American
2 Refugees v. I.N.S., 795 F.2d 1434, 1441 (9th Cir. 1986) (quoting Martin v. International
3 Olympic Committee, 740 F.2d 670, 675 (9th Cir. 1984)).

4 Plaintiff fails to meet the all of the legal standards required to be granted an
5 injunction. To succeed on a motion for such relief, Plaintiff must establish that he is likely
6 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
7 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
8 the public interest. Plaintiff states that the threatened injury outweighs any damage the
9 injunction might cause; the public interest is best served by issuing the injunction; and that
10 there is a substantial likelihood of success on the merits of Plaintiff’s case.

11 The Motion appears to be describing different causes of action in different
12 institutions not being dealt with here. Plaintiff appears to be seeking a transfer out of his
13 current institution, which is not the same institution where the claims found to be
14 cognizable occurred. The relief sought by Plaintiff in the instant motion is not related to the
15 controversy before the Court. Any orders relating to a transfer from Plaintiff’s current
16 institution (USP-Lewisburg) would not remedy Plaintiff’s Eighth Amendment claims that
17 occurred at USP-Atwater. Therefore, the Court lacks jurisdiction to issue the order sought
18 by Plaintiff.

19 Accordingly, the Court RECOMMENDS that Plaintiff’s request for injunctive relief be
20 DENIED.

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1 These Findings and Recommendations are submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
3 Within **thirty (30) days** after being served with these findings and recommendations, the
4 Plaintiff may file written objections with the Court. Any such document should be captioned
5 “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that
6 failure to file objections within the specified time may waive the right to appeal the District
7 Court’s order. Martinez v. Y1st, 951 F.2d 1153 (9th Cir. 1991).

8 IT IS SO ORDERED.

9 Dated: June 24, 2011


UNITED STATES MAGISTRATE JUDGE