

1 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
2 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
3 “frivolous or malicious,” that “fails to state a claim on which relief may be granted,” or that “seeks
4 monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

5 In determining whether a complaint states a claim, the Court looks to the pleading standard
6 under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must contain “a short and
7 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
8 “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it
9 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v.
10 Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555
11 (2007)).

12 **II. Complaint Allegations**

13 Plaintiff is in the custody of the California Department of Corrections and Rehabilitation
14 (“CDCR”) and is incarcerated at Kern Valley State Prison. Plaintiff alleges that on June 7, 2010,
15 he wrote a grievance against Defendant Gallagher. After Defendant Gallagher read the grievance
16 he told Plaintiff that he was going to tell the inmate porters and reps that they would be locked down
17 and it was Plaintiff’s fault and that Defendant Gallagher would have the inmates “get” him. (First
18 Amend. Compl. 4, ECF No. 18.) Defendant Romero and Gallagher were sitting together and said
19 they were going to have Plaintiff “handled.” (Id. at 5.)

20 The following day, Defendant Romero was in the control booth and he told Plaintiff to come
21 out of his cell to go to work. Plaintiff saw some inmates at a table in the living area. While
22 Defendant Romero was watching from the control booth, one of the inmates called Plaintiff over.
23 The inmate said that Defendant Gallagher had told him what Plaintiff had said and that Plaintiff
24 better keep his mouth shut and not do anything to mess things up for the inmate porters. Plaintiff
25 was then hit from the side and attacked by the inmates. As Plaintiff was being attacked, he looked
26 up and saw Defendant Romero watching. Defendant Romero did not activate any alarms or do
27 anything to stop the inmates from attacking Plaintiff. Plaintiff also saw Defendant Gallagher in the
28 day room office watching. Plaintiff could hear Defendant Gallagher and Romero talking about how

1 they had planned the attack. As a result of the attack Plaintiff's right hand and elbow were fractured
2 and his right leg was broken with the bone sticking out of the skin. (Id.)

3 Plaintiff got up and hopped to a bench. Plaintiff asked Defendant Romero to call a medic
4 and tell them that his leg was broken. Defendant Romero refused to call a medic and told Plaintiff
5 to stay on the bench until the pill nurse came in three to four hours. Plaintiff showed Defendant
6 Romero the broken leg with the bone sticking out of it and Defendant Romero still refused to call
7 for medical staff. (Id.)

8 Plaintiff sat on the floor in front of his cell attempting to put the bone back into place so that
9 he could walk to the medical clinic. At Plaintiff's request, Defendant Romero opened Plaintiff's cell
10 so he could get his walker. Plaintiff got his walker and hobbled to the medical clinic where
11 arrangements were made to take him to the hospital. (Id. at 6.)

12 Plaintiff is seeking compensatory and punitive damages and injunctive relief requiring that
13 assault and battery charges be referred to the District Attorney for criminal prosecution and an order
14 directing the CDCR to provide Plaintiff "with full disclosure of all surety bonding info held by
15 CDCR and KVSP covering these types of injuries and incidents." (Id. at 3.)

16 Plaintiff's complaint states a cognizable claim against Defendant Romero for deliberate
17 indifference to serious medical needs in violation of the Eighth Amendment; and against Defendants
18 Gallagher and Romero for conspiracy, retaliation in violation of the First Amendment, and failure
19 to protect in violation of the Eighth Amendment.

20 **III. Injunctive Relief**

21 "A preliminary injunction is an extraordinary remedy never awarded as of right." Winter v.
22 Natural Resources Defense Council, Inc., 129 S. Ct. 365, 376 (2008) (citation omitted). "A plaintiff
23 seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is
24 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips
25 in his favor, and that an injunction is in the public interest." Id. at 374 (citations omitted). An
26 injunction may only be awarded upon a *clear showing* that the plaintiff is entitled to relief. Id. at 376
27 (citation omitted) (emphasis added).

28 Federal courts are courts of limited jurisdiction and in considering a request for preliminary

1 injunctive relief, the Court is bound by the requirement that as a preliminary matter, it have before
2 it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103 S.Ct. 1660,
3 1665 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.,
4 454 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982). If the Court does not have an actual case or
5 controversy before it, it has no power to hear the matter in question. Id. Requests for prospective
6 relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the Prison Litigation Reform Act, which
7 requires that the Court find the “relief [sought] is narrowly drawn, extends no further than necessary
8 to correct the violation of the Federal right, and is the least intrusive means necessary to correct the
9 violation of the Federal right.”

10 In his first amended complaint Plaintiff requests an injunction requiring the warden or CDCR
11 to refer charges to the District Attorney for criminal prosecution and provide surety bond
12 information. The claims that have been found to be cognizable in this action do not provide
13 jurisdiction to allow the Court to order the warden or CDCR to grant the relief requested.¹ 18 U.S.C.
14 § 3626(a)(1)(A); Summers v. Earth Island Institute, 129 S. Ct. 1142, 1149-50 (2009) (citation
15 omitted) Price v. City of Stockton, 390 F.3d 1105, 1112 (9th Cir. 2004). Accordingly, Plaintiff’s
16 claim for injunctive relief is not cognizable.

17 Additionally, Plaintiff’s motion for emergency injunctive relief states that his life is in danger
18 as Correctional Officer Castellanos tried to pay some Mexican inmates to stab Plaintiff. Plaintiff
19 alleges that Sergeant Rivera and Captain Henderson are covering up this conduct. Plaintiff alleges
20 that this is in retaliation for his filing this lawsuit and requests the Court to contact CDCR and notify
21 Director Cate and the Office of Internal Affairs. (Emergency Motion 1, ECF No. 19.)

22 To the extent Plaintiff believes he is in danger, he has other avenues of relief available to
23 him, including filing a petition for writ of habeas corpus in state court. E.g., In re Estevez, 83
24 Cal.Rptr.3d 479, 491 (Cal. Ct. App. 2008). The issue is not that Plaintiff’s allegations are not
25 serious or that Plaintiff is not entitled to relief if sought in the proper forum. The issue is that this
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27 ¹ In addition, CDCR itself is immune from suit. Aholelei v. Dept. of Public Safety, 488 F.3d 1144, 1147
28 (9th Cir. 2007).

1 action cannot be used by Plaintiff obtain the relief he seeks. The seriousness of Plaintiff's
2 allegations concerning feared impending harm cannot and do not overcome what is a *jurisdictional*
3 bar. Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 103-04 (1998) (“[The] triad of injury in
4 fact, causation, and redressability constitutes the core of Article III’s case-or-controversy
5 requirement, and the party invoking federal jurisdiction bears the burden of establishing its
6 existence.”)

7 **IV. Conclusion and Order**

8 Based on the foregoing, it is HEREBY ORDERED that:

- 9 1. This action shall proceed on the first amended complaint on Plaintiff’s claims against
10 Defendant Romero for deliberate indifference to serious medical needs in violation
11 of the Eighth Amendment; and against Defendants Gallagher and Romero for
12 conspiracy, retaliation in violation of the First Amendment, and failure to protect in
13 violation of the Eighth Amendment;
- 14 2. Plaintiff’s claims for injunctive relief are dismissed, with prejudice;
- 15 3. Plaintiff’s motion for injunctive relief, filed August 11, 2011, is HEREBY DENIED,
16 with prejudice, for lack of jurisdiction.

17
18 IT IS SO ORDERED.

19 **Dated: August 15, 2011**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE