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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRADY ARMSTRONG,
Plaintiff,
vs.
A. HEDGPETH, et al.,
Defendants.

1:11-cv-00761-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTIONS FOR PRELIMINARY
INJUNCTIVE RELIEF BE DENIED
(Docs. 32, 33, 35.)

OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS

I. BACKGROUND

Brady K. Armstrong ("Plaintiff") is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on May 11, 2011. (Doc. 1.) On November 20, 2013, Plaintiff filed the First Amended Complaint. (Doc. 43.)

Now pending are Plaintiff's motions for preliminary injunction and temporary restraining order, filed on July 5, 2013 and July 10, 2013, and July 15, 2013. (Docs. 32, 33, 35.)

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1 **II. PRELIMINARY INJUNCTIVE RELIEF**

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

13 Federal courts are courts of limited jurisdiction, and as a preliminary matter, the court
14 must have before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95,
15 102, 103 S.Ct. 1660, 1665 (1983); Valley Forge Christian Coll. v. Ams. United for Separation
16 of Church and State, Inc., 454 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982); Jones v. City of
17 Los Angeles, 444 F.3d 1118, 1126 (9th Cir. 2006). If the court does not have an actual case or
18 controversy before it, it has no power to hear the matter in question. Id. Thus, “[a] federal
19 court may issue an injunction [only] if it has personal jurisdiction over the parties and subject
20 matter jurisdiction over the claim; it may not attempt to determine the rights of persons not
21 before the court.” Zepeda v. United States Immigration Service, 753 F.2d 719, 727 (9th Cir.
22 1985).

23 **Discussion**

24 Plaintiff seeks court orders prohibiting prison officials from retaliating against him by
25 submitting fabricated serious rules violation reports, denying him second medical opinions by
26 off-site doctors, communicating with all other CDCR state employees, poisoning Plaintiff’s
27 food, assaulting him, and interfering with his legal copywork. Plaintiff also seeks court orders

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1 directing prison officials to return his personal property, release him from the SHU, and
2 transfer him to another facility.

3 Plaintiff is presently incarcerated at the California Substance Abuse Treatment Facility
4 in Corcoran, California. The events at issue in Plaintiff's First Amended Complaint allegedly
5 occurred at Kern Valley State Prison (KVSP) in Delano, California, in 2006-2008 when
6 Plaintiff was incarcerated there.¹ Therefore, the court orders requested by Plaintiff would not
7 remedy any of the claims upon which this action proceeds. Plaintiff requests court orders
8 protecting him from present and future actions by defendants. Because such orders would not
9 remedy any of the past claims upon which this action proceeds, the court lacks jurisdiction to
10 issue the orders sought by Plaintiff, and Plaintiff's motions must be denied.

11 Moreover, "[A] federal court may [only] issue an injunction if it has personal
12 jurisdiction over the parties and subject matter jurisdiction over the claim; *it may not attempt to*
13 *determine the rights of persons not before the court.*" Zepeda v. United States Immigration
14 Service, 753 F.2d 719, 727 (9th Cir. 1985) (emphasis added). Because none of the defendants
15 have appeared in this action, the Court does not have jurisdiction to issue an order prohibiting
16 any of them from acting against Plaintiff. Further, because Plaintiff is no longer subjected to
17 the actions of employees at KVSP, his motions for court orders prohibiting those employees'
18 actions are moot.

19 **III. CONCLUSION AND RECOMMENDATIONS**

20 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that Plaintiff's motions
21 for preliminary injunctive relief, filed on July 5, 2013 and July 10, 2013, and July 15, 2013, be
22 **DENIED**.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty
25 days after being served with these findings and recommendations, plaintiff may file written
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28 ¹ Plaintiff states in the First Amended Complaint: "At all times mentioned in this complaint, Brady Armstrong was a state prisoner/inmate within the CDCR 'at' Kern Valley State Prison[] 'located' in Delano, County of Kern, California." (First Amd Cmp, Doc. 43 at 3 ¶2.)

1 objections with the court. Such a document should be captioned "Objections to Magistrate
2 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
3 within the specified time may waive the right to appeal the District Court's order. Martinez v.
4 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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8 IT IS SO ORDERED.

9 Dated: November 21, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE