1
2
3
4
5
6
7

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

10

11 | DAVID ESTRADA,

) Case No.: 1:13cv00919 LJO DLB (PC)

12 | Plaintiff,

13 | v.

14 | TASSEY, et al.,

15 | Defendants.

16

)
)
)
) FINDINGS AND RECOMMENDATIONS
) REGARDING PLAINTIFF'S MOTION FOR
) INJUNCTIVE RELIEF
) (Document 8)
)
) THIRTY-DAY OBJECTION DEADLINE
)

17

18

19

Plaintiff David Estrada ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis

in this civil rights action. Plaintiff filed his complaint on June 17, 2013. He filed a Motion for

Injunctive Relief or Protective Order on June 20, 2013.

20

DISCUSSION

21

22

23

24

25

A preliminary injunction is an extraordinary remedy never awarded as of right. Winter v.

Natural Resources Defense Council, Inc., 555 U.S. 7, 24, 129 S.Ct. 365, 376 (2008) (citation and

quotation marks omitted). For each form of relief sought in federal court, Plaintiff must establish

standing. Summers v. Earth Island Institute, 555 U.S. 488, 493, 129 S.Ct. 1142, 1149 (2009) (citation

omitted); Mayfield v. United States, 599 F.3d 964, 969 (9th Cir. 2010) (citation omitted).

26

27

28

This requires Plaintiff to show that he is under threat of suffering an injury in fact that is concrete and

particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly

1

traceable to challenged conduct of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury. <u>Summers</u>, 129 S.Ct. at 1149 (quotation marks and citation omitted); <u>Mayfield</u>, 599 F.3d at 969.

Further, any award of equitable relief is governed by the Prison Litigation Reform Act, which provides in relevant part, "Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right." 18 U.S.C. § 3626(a)(1)(A).

In a separate order issued concurrently with these Findings and Recommendation, the Court dismissed Plaintiff's complaint with leave to amend. Until Plaintiff files an amended complaint and the Court is able to determine which claims are cognizable and appropriately raised in this action, the Court lacks jurisdiction to issue any preliminary injunctions. 18 U.S.C. § 3626(a)(1)(A); <u>Summers</u>, 129 S.Ct. at 1149; <u>Mayfield</u>, 599 F.3d at 969.

Moreover, the allegations in Plaintiff's motion are vague and unsubstantiated. He states repeatedly that there is a conspiracy among prison staff to have him hurt or killed, and it also appears that he fears for his safety. However, Plaintiff has failed to present any specific factual allegations to meet the requirements of injunctive relief. Plaintiff has failed to demonstrate that the threat to his safety is "actual and imminent, not conjectural or hypothetical," or "fairly traceable to challenged conduct of the defendant." <u>Summers</u>, 129 S.Ct. at 1149 (quotation marks and citation omitted); <u>Mayfield</u>, 599 F.3d at 969.

RECOMMENDATION

For these reasons, the Court RECOMMENDS that Plaintiff's Motion for Injunctive Relief or Protective Order be DENIED WITHOUT PREJUDICE.

2

1

2

3   These Findings and Recommendations are submitted to the United States District Judge

4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within thirty (30) days after

5 being served with these Findings and Recommendations, Plaintiff may file written objections with the

6 court. Such a document should be captioned "Objections to Magistrate Judge's Findings and

7 Recommendations." Plaintiff is advised that failure to file objections within the specified time may

8 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153, 1157 (9th Cir.

9 1991).

IT IS SO ORDERED.

    Dated: **July 8, 2013**   /s/ *Dennis L. Beck*
                                            UNITED STATES MAGISTRATE JUDGE

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

3