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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOSE LUIS BUENROSTRO,)	Case No.: 1:14-cv-00075-BAM PC
)	
Plaintiff,)	ORDER DENYING MOTION FOR TEMPORARY
)	RESTRAINING ORDER AND RENEWAL
v.)	MOTION FOR TEMPORARY RESTRAINING
)	ORDER WITHOUT PREJUDICE
J. CASTILLO, et al.,)	(ECF Nos. 2, 19)
)	
Defendants.)	
)	
)	
)	

I. Background

Plaintiff Luis Buenrostro (“Plaintiff”) is a federal prisoner proceeding pro se and in forma pauperis in this civil action pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999 (1971), which provides a remedy for violation of civil rights by federal actors. Plaintiff consented to the jurisdiction of the Magistrate Judge. (ECF No. 5.)

Plaintiff initiated this action on January 17, 2014, and filed a motion seeking an emergency temporary restraining order. (ECF Nos. 1, 2.) This action concerns alleged events occurring at FCI Mendota.

On April 14, 2014, Plaintiff filed a motion to amend his complaint and lodged his proposed first amended complaint. (ECF Nos. 12, 13.) Plaintiff’s motion to amend was not entered on the Court’s docket until April 15, 2014.

1 On April 15, 2014, the Court also screened Plaintiff's original complaint and identified certain
2 legal and pleading deficiencies. The Court dismissed Plaintiff's complaint and granted him leave to
3 amend within thirty days. (ECF No. 16.) Based on the dismissal of Plaintiff's complaint, the Court
4 also denied Plaintiff's motion for temporary restraining order without prejudice because there was no
5 longer a case or controversy pending before the Court. (ECF No. 15.)

6 On April 17, 2014, the Court granted Plaintiff's motion to amend the complaint and directed
7 the Clerk of the Court to file Plaintiff's lodged first amended complaint. The Court also vacated its
8 screening order dismissing the complaint with leave to amend and vacated its order denying Plaintiff's
9 motion for a temporary restraining order. (ECF No. 17.)

10 On April 17, 2014, Plaintiff renewed his motion for temporary restraining order. (ECF No.
11 19.)

12 On April 24, 2014, Plaintiff filed a motion to strike the amended complaint and lodged a
13 second first amended complaint. (ECF Nos. 20, 21.)

14 On May 15, 2014, the Court granted Plaintiff's motion to strike and directed the Clerk of the
15 Court to file Plaintiff's first amended complaint, which was lodged on May 5, 2014. (ECF No. 22.)

16 On November 26, 2014, the Court dismissed Plaintiff's first amended complaint with leave to
17 amend within thirty days. (ECF No. 24.)

18 Currently pending before the Court is Plaintiff's motion for temporary restraining order and
19 Plaintiff's renewal motion for temporary restraining order. (ECF Nos. 2, 19.)

20 **II. Plaintiff's Motions for Temporary Restraining Order**

21 Plaintiff is currently housed at the USP Pollock in Pollack, Louisiana. Plaintiff requests a
22 temporary restraining order requiring Defendants Castillo and Gill to arrange for an immediate
23 transfer of Plaintiff back to an institution within California. (ECF No. 19.) Plaintiff contends that his
24 transfer out of California was done in retaliation for filing grievances against FCI Mendota officials.
25 Plaintiff asserts that transfer to USP Pollock places him in danger of being brutally attacked, exposed
26 to severe injuries or killed by Texas gang members known by Defendants. (ECF No. 2, p. 3.) Plaintiff
27 also contends that he is suffering from an inability to see his family members in California. (ECF No.
28 19, pp. 2-4.)

1 The analysis for a temporary restraining order is substantially identical to that for a preliminary
2 injunction, Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush and Co., Inc., 240 F.3d 832, 839 n.7 (9th
3 Cir. 2001), and “[a] preliminary injunction is an extraordinary remedy never awarded as of right.”
4 Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24, 129 S.Ct. 365, 376 (2008) (citation
5 omitted). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
6 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
7 balance of equities tips in his favor, and that an injunction is in the public interest.” Id. at 20 (citations
8 omitted). An injunction may only be awarded upon a clear showing that the plaintiff is entitled to
9 relief. Id. at 22 (citation omitted).

10 Federal courts are courts of limited jurisdiction, and as a preliminary matter, the court must
11 have before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103 S.Ct.
12 1660, 75 L.Ed.2d 675 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church
13 and State, Inc., 454 U.S. 464, 471, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982). If the court does not have
14 an actual case or controversy before it, it has no power to hear the matter in question. Id. Thus, “[a]
15 federal court may issue an injunction [only] if it has personal jurisdiction over the parties and subject
16 matter jurisdiction over the claim; it may not attempt to determine the rights of persons not before the
17 court.” Zepeda v. United States Immigration and Naturalization Serv., 753 F.2d 719, 727 (9th
18 Cir.1983); see Fed.R.Civ.P. 65(d) (listing persons bound by injunction).

19 The Court takes Plaintiff’s assertions seriously, but lacks jurisdiction to issue the relief
20 requested. On November 26, 2014, Plaintiff’s first amended complaint was dismissed with leave to
21 amend. As such, Plaintiff is not entitled to any preliminary injunction because there is no case or
22 controversy and the Court lacks jurisdiction to issue any injunctive relief. Plaintiff’s motion for
23 injunctive relief shall be denied without prejudice to refileing.

24 Plaintiff is cautioned that the Federal Bureau of Prisons is not a party to this action and that a
25 Bivens action cannot be maintained against the Federal Bureau of Prisons as a federal agency. FDIC
26 v. Meyer, 510 U.S. 471, 484-86, 114 S.Ct. 996, 127 L.Ed.2d 308 (1994). Plaintiff is further cautioned
27 that “an inmate has no justifiable expectation that he will be incarcerated in any particular prison
28

1 within a State, [and] he has no justifiable expectation that he will be incarcerated in any particular
2 State.” Olim v. Wakinekona, 461 U.S. 238, 245 (1983).

3 **III. Conclusion and Order**

4 For the reasons stated, Plaintiff’s motion for temporary restraining order and his renewal
5 motion for temporary restraining order are HEREBY DENIED without prejudice.

6
7 IT IS SO ORDERED.

8 Dated: December 1, 2014

/s/ Barbara A. McAuliffe
9 UNITED STATES MAGISTRATE JUDGE