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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 NICHOLAS CHRISTOPHER PAPPAS,

12 Plaintiff,

13 vs.

14 NORTH KERN STATE PRISON, et al.,

15 Defendants.  
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1:14-cv-00109-GSA-PC

ORDER DENYING MOTION FOR  
PRELIMINARY INJUNCTIVE RELIEF

ORDER DISREGARDING PLAINTIFF'S  
MOTION FOR LEAVE TO AMEND AS  
MOOT

(Doc. 18.)

21 **I. BACKGROUND**

22 Nicholas Christopher Pappas ("Plaintiff") is a state prisoner proceeding pro se in this  
23 civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this  
24 action on January 27, 2014. (Doc. 1.) On March 24, 2014, Plaintiff consented to Magistrate  
25 Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no other parties have made  
26 an appearance. (Doc. 6.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the  
27 Eastern District of California, the undersigned shall conduct any and all proceedings in the case  
28 until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

1 This case now proceeds with Plaintiff's original Complaint against defendant  
2 Correctional Officer (C/O) Lopez ("Defendant") for use of excessive force in violation of the  
3 Eighth Amendment.<sup>1</sup> (Doc. 1). On October 16, 2014, the court issued an order directing the  
4 United States Marshal to serve process upon Defendant. (Doc. 15.) To date, there is no  
5 evidence on the court's record that Defendant has been served, and Defendant has not appeared  
6 in this action. (Court Record.)

7 On December 8, 2014, Plaintiff filed motion for preliminary injunctive relief and for  
8 leave to amend the Complaint. (Doc. 18.)

## 9 **II. PRELIMINARY INJUNCTIVE RELIEF**

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

17 Federal courts are courts of limited jurisdiction and in considering a request for  
18 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary  
19 matter, it have before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S.  
20 95, 102, 103 S.Ct. 1660, 1665 (1983); Valley Forge Christian Coll. v. Ams. United for  
21 Separation of Church and State, Inc., 454 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982). If the  
22 Court does not have an actual case or controversy before it, it has no power to hear the matter  
23 in question. Id. Requests for prospective relief are further limited by 18 U.S.C. §  
24 3626(a)(1)(A) of the Prison Litigation Reform Act, which requires that the Court find the  
25 "relief [sought] is narrowly drawn, extends no further than necessary to correct the violation of  
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28 <sup>1</sup> On September 29, 2014, the court issued an order dismissing all other claims and defendants  
from this action, based on Plaintiff's failure to state a claim. (Doc. 12.)

1 the Federal right, and is the least intrusive means necessary to correct the violation of the  
2 Federal right.”

3 Plaintiff requests a court order for Warden K. Holland to search certain officers’ work  
4 files for malicious behavior, and to have the officers removed from their duties; for Warden K.  
5 Holland to undergo a psychological evaluation for post-traumatic stress disorder and take anger  
6 management training; for Warden K. Holland to install video recording devices in each section  
7 of the prison; and for Plaintiff to be transferred to another facility.

8 Plaintiff’s motion must be denied because such relief would not remedy any of the  
9 claims in Plaintiff’s Complaint. The Court lacks jurisdiction to issue an order granting the  
10 relief sought by Plaintiff, because the Court does not have such a case or controversy before it  
11 in this action. See Zepeda v. United States Immigration Service, 753 F.2d 719, 727 (9th Cir.  
12 1985); City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665 (1983); Valley  
13 Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454 U.S. 464,  
14 471, 102 S.Ct. 752, 757-58 (1982). Plaintiff’s Complaint in this action arises from an incident  
15 of excessive force by defendant C/O Lopez which allegedly occurred in September 2013.  
16 Plaintiff now requests a court order requiring future action. Because the court order sought by  
17 Plaintiff for future action would not remedy any of the claims upon which this action proceeds,  
18 the court lacks jurisdiction to issue such orders, and Plaintiff’s motion must be denied.

19 **III. LEAVE TO AMEND – RULE 15(a)**

20 Plaintiff requests leave to amend the Complaint to add new defendants and claims to  
21 this action. Plaintiff’s motion is moot because he was advised by the court’s order on  
22 December 5, 2014, that he has leave to amend the Complaint at this stage of the proceedings, if  
23 he so wishes. The court’s order advised Plaintiff that if he wishes to amend the Complaint, he  
24 must file a First Amended Complaint which is complete in itself without reference to the prior  
25 Complaint. Plaintiff should refer to the court’s December 5, 2014 order for instruction.

26 **IV. CONCLUSION**

27 Accordingly, it is HEREBY ORDERED that:

- 28 1. Plaintiff’s motion for preliminary injunctive relief is DENIED; and

