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

ANDREW S. ANDERSEN,)	Case No.: 1:16-cv-00236-DAD-SAB (PC)
)	
Plaintiff,)	
)	FINDINGS AND RECOMMENDATIONS
v.)	RECOMMENDING PLAINTIFF’S MOTION
)	FOR PRELIMINARY INJUNCTION BE
MARISELA MONTES, et al.,)	DENIED AS PREMATURE
)	
Defendants.)	[ECF Nos. 9, 10]
)	

Plaintiff Andrew S. Andersen is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion for a preliminary injunction, filed May 12, 2016, and order to show cause why a preliminary injunction should not be issued filed on May 17, 2016.

**I.
RELEVANT HISTORY**

On March 15, 2016, the undersigned issued Findings and Recommendations to dismiss the complaint for failure to state a cognizable claim for relief. Specifically, it was determined that Plaintiff’s claims were barred by the Supreme Court’s decision in Swarthout v. Cooke, 562 U.S. 216 (2001).

1 On November 9, 2016, District Judge Drozd adopted the Findings and Recommendations
2 regarding Plaintiff’s due process claims, but remanded the action back to the undersigned for
3 consideration whether Plaintiff stated a cognizable retaliation or Establishment Clause/RLUIPA claim
4 and, if not, whether amendment should be permitted.¹

5 **II.**
6 **DISCUSSION**

7 The purpose of a temporary restraining order or a preliminary injunction is to preserve the
8 status quo if the balance of equities so heavily favors the moving party that justice requires the court to
9 intervene to secure the positions until the merits of the action are ultimately determined. University of
10 Texas v. Camenisch, 451 U.S. 390, 395 (1981). “A plaintiff seeking a preliminary injunction [or
11 temporary restraining order] must establish that he is likely to succeed on the merits, that he is likely
12 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
13 favor, and that an injunction is in the public interest.” Winter v. Natural Resources Defense Council,
14 Inc., 555 U.S. 7, 20 (2008).

15 “[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be
16 granted unless the movant, *by a clear showing*, carries the burden of persuasion.” Mazurek v.
17 Armstrong, 520 U.S. 968, 972 (1997) (quotations and citations omitted) (emphasis in original). A
18 party seeking a temporary restraining order or preliminary injunction simply cannot prevail when that
19 motion is unsupported by evidence.

20 Federal courts are courts of limited jurisdiction and in considering a request for preliminary
21 injunctive relief, the Court is bound by the requirement that as a preliminary matter, it have before it
22 an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95 102 (1983); Valley Forge
23 Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454 U.S. 464, 471 (1982). If
24 the Court does not have an actual case or controversy before it, it has no power to hear the matter in
25 question. Id. Requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the
26

27 ¹ On December 7, 2016, Plaintiff filed a motion for reconsideration of the District Judge’s November 9, 2016, order.
28

1 Prison Litigation Reform Act, which requires that the Court find the “relief [sought] is narrowly
2 drawn, extends no further than necessary to correct the violation of the Federal right, and is the least
3 intrusive means necessary to correct the violation of the Federal right.”

4 In his motion for injunctive relief, Plaintiff requests the following:

- 5 1. To remove current threat of sanctions and to refrain from future threat of sanctions for the
6 plaintiff’s protected speech and beliefs;
- 7 2. To vacate the CRA [Comprehensive Risk Assessment] and immediate order a new CRA by
8 a forensic psychologist who has the experience and expertise to conduct risk assessments
9 for persons with the offense of the plaintiff;
- 10 3. To use the proper risk assessment instruments for the plaintiff’s offense;
- 11 4. To follow the American Psychological Association’s Code of Conduct when assessing the
12 risk of the plaintiff;
- 13 5. To vacate the last suitability hearing and immediately order a new hearing;
- 14 6. To provide a criteria for suitability to the plaintiff that is realistically possible to achieve,
15 clear enough for persons of ordinary intelligence to agree on its meaning and application,
16 and based on a contemporary, evidence-based model of risk assessment and rehabilitation
17 specific to his offense;
- 18 7. To perform suitability hearings based on a contemporary, evidence-based model of risk
19 assessment and rehabilitation specific to the plaintiff’s offense;
- 20 8. To not base suitability on CDCR programs, resources, and services that are not available to
21 the plaintiff;
- 22 9. To not recommend programs, groups, and therapies that are not available or not validated
23 by the BPH;
- 24 10. To follow the minimum due process requirements as determined by this court; and
- 25 11. To follow any other order this Court deems fit to address the facts and law in this case due
26 to the plaintiff’s pro se standing.

27 (Mot. at 2-3, ECF No. 9.)

28 The Court has yet to screen Plaintiff’s complaint to determine whether Plaintiff states a
cognizable retaliation and/or Establishment Clause/RLUIPA Claim, and now that Plaintiff has filed a
motion for reconsideration of the Court’s November 9, 2016, order, the Court will not screen the

1 complaint until the motion is ruled on by the District Judge. Therefore, at this stage of the
2 proceedings, the Court does not have before it an actual case or controversy, nor does the Court have
3 jurisdiction over any of the Defendants in this action. As a result, the Court has no jurisdiction at this
4 time to award any preliminary injunctive relief. “A federal court may issue an injunction if it has
5 personal jurisdiction over the parties and subject matter jurisdiction over the claim; it may not attempt
6 to determine the rights of persons not before the court.” Zepeda v. United States Immigration Service,
7 753 F.2d 719, 727 (9th Cir. 1985). Once the Court has screened the original complaint to determine if
8 there any viable claims for relief, thereby satisfying the actual case or controversy requirement,
9 Plaintiff may seek preliminary injunctive relief that is sufficiently related to his cognizable legal
10 claims to confer jurisdiction on the Court to award the relief sought. Lyons, 461 U.S. at 101; Jones v.
11 City of Los Angeles, 444 F.3d 1118, 1126 (9th Cir. 2006); 18 U.S.C. § 3626(a)(1)(A). Until such
12 time, a request for preliminary injunctive relief is premature, and Plaintiff’s must be denied.

13 **III.**

14 **RECOMMENDATION**

15 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff’s motion for a
16 preliminary injunction be DENIED.

17 This Findings and Recommendation will be submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after
19 being served with this Findings and Recommendation, Plaintiff may file written objections with the
20 Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
21 Recommendation.” Plaintiff is advised that failure to file objections within the specified time may
22 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
23 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24
25 IT IS SO ORDERED.

26 Dated: December 12, 2016

27 
28 UNITED STATES MAGISTRATE JUDGE