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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MONICO J. QUIROGA III,
Plaintiff,
v.
C. COOPER, *et al.*,
Defendants.

Case No. 1:17-cv-00004-DAD-JDP

FINDINGS AND RECOMMENDATIONS
TO DENY PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION

(Doc. No. 57.)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN DAYS

Plaintiff Monico J. Quiroga III is a state prisoner proceeding without counsel in this civil rights action under 42 U.S.C. § 1983. He brings an Eighth Amendment excessive force claim against defendants C. Cooper and J. Moreno. Plaintiff has filed a motion requesting to “add jurisdiction [pursuant] to 28 U.S.C. § 2361” and a preliminary injunction. (Doc. No. 57.) For the reasons described below, the court recommends denying plaintiff’s motion.

1 **I. RELIEF REQUESTED**

2 Plaintiff requests an injunction to enjoin “[nonstop] harassment over satellite.” (*Id.*) He
3 has submitted a declaration stating that the Kern County Sherriff’s Office Gang and Narcotics
4 Task Force is using military tactics, such as sensory deprivation, to invade his “sphere of the
5 intellect.” (*Id.*)

6 **II. LEGAL STANDARDS**

7 A federal district court may issue injunctive relief only if the court has personal
8 jurisdiction over the parties and subject matter jurisdiction over the lawsuit. *See Murphy Bros.,*
9 *Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) (noting that one “becomes a
10 party officially, and is required to take action in that capacity, only upon service of summons or
11 other authority-asserting measure stating the time within which the party served must appear to
12 defend”). The court may not attempt to determine the rights of persons not before it. *See*
13 *Hitchman Coal & Coke Co. v. Mitchell*, 245 U.S. 229, 234-35 (1916); *Zepeda v. INS*, 753 F.2d
14 719, 727-28 (9th Cir. 1983); *see also Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)
15 (injunctive relief must be “narrowly tailored to give only the relief to which plaintiffs are
16 entitled”). Under Federal Rule of Civil Procedure 65(d)(2), an injunction binds only “the
17 parties to the action,” their “officers, agents, servants, employees, and attorneys,” and “other
18 persons who are in active concert or participation.” Fed. R. Civ. P. 65(d)(2)(A)-(C). Requests
19 for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the Prison Litigation
20 Reform Act, which requires that the court find that the “relief [sought] is narrowly drawn,
21 extends no further than necessary to correct the violation of the Federal Right, and is the least
22 intrusive means necessary to correct the violation of the Federal Right.”

23 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed
24 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
25 that the balance of equities tips in his favor, and that an injunction is in the public interest.”
26 *Glossip v. Gross*, 135 S. Ct. 2726, 2736-37 (2015) (quoting *Winter v. Natural Res. Def.*
27 *Council, Inc.*, 555 U.S. 7, 20 (2008)). “[P]laintiffs must establish that irreparable harm is
28 likely, not just possible, in order to obtain a preliminary injunction.” *Alliance for the Wild*

1 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). In addition to establishing irreparable
2 harm, the injunctive relief sought must be related to the claims brought in the complaint. *See*
3 *Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015)
4 (“When a plaintiff seeks injunctive relief based on claims not pled in the complaint, the court
5 does not have the authority to issue an injunction.”).

6 **III. ANALYSIS**

7 As a preliminary matter, plaintiff cites to 28 U.S.C. § 2361 as authority for his request.
8 The statute is applicable to interpleader actions and was, thus, cited in error. *See* 28 U.S.C. §
9 2361 (applicable “[i]n any civil action of interpleader”). The court construes plaintiff’s
10 injunction request as a request for a preliminary injunction under Federal Rule of Civil
11 Procedure 65.

12 The court will recommend that plaintiff’s motion for injunctive relief be denied. The
13 complaint alleges that defendants Cooper and Moreno used excessive force against plaintiff
14 while he was detained in Kern County. (Doc. No. 1.) The injunction request is directed at the
15 Kern County Sherriff’s Office, which is not a defendant in this case. (Doc. No. 19.) The only
16 defendant who has appeared in this case is defendant Cooper, and the motion does not identify
17 any conduct by Cooper that plaintiff is seeking to enjoin. Thus, plaintiff appears to be basing
18 his injunction request on a claim of unconstitutional conditions of confinement that was not
19 pled in the complaint. Accordingly, the court does not have authority to issue the requested
20 injunction. *See Pac. Radiation Oncology*, 810 F.3d at 633 (“When a plaintiff seeks injunctive
21 relief based on claims not pled in the complaint, the court does not have the authority to issue
22 an injunction.”).

23 **IV. RECOMMENDATION**

24 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s motion for injunctive
25 relief (Doc. No. 57) be DENIED.

26 These findings and recommendations will be submitted to the U.S. district judge
27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
28 (14) days of service of these findings and recommendations, plaintiff may file written

1 objections with the court. If plaintiff files such objections, he should do so in a document
2 captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is
3 advised that failure to file objections within the specified time may result in the waiver of rights
4 on appeal. *See Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v.*
5 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

6
7 IT IS SO ORDERED.

8 Dated: August 2, 2018

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10 UNITED STATES MAGISTRATE JUDGE

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