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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 WILLIAM J. GRADFORD,

12 Plaintiff,

13 v.

14 MCDOUGALL, et al.,

15 Defendants.
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1:17-cv-00201-DAD-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF BE DENIED
(ECF No. 28.)

OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS

19 **I. BACKGROUND**

20 William J. Gradford ("Plaintiff") is a prisoner proceeding *pro se* and *in forma pauperis*
21 with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with
22 Plaintiff's initial Complaint, filed on February 13, 2017, against defendants Tiexiera and
23 McCarthy, deputies of the Stanislaus County Sheriff's Department ("SCSD"), for retaliation in
24 violation of the First Amendment. (ECF No. 1.)

25 On March 1, 2018, Plaintiff filed a request for a court order to stop unlawful conduct by
26 deputies of the SCSD named in civil suits pending in this court, including defendants Tiexiera
27 and McCarthy, upon Plaintiff's release from state prison scheduled to occur on November 26,
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1 2018. (ECF No. 28.) The court construes Plaintiff’s request as a motion for preliminary
2 injunctive relief.

3 **II. PRELIMINARY INJUNCTIVE RELIEF**

4 “A preliminary injunction is an extraordinary remedy never awarded as of right.”
5 Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24, 129 S.Ct. 365, 376 (2008)
6 (citation omitted). “A plaintiff seeking a preliminary injunction must establish that he is likely
7 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
8 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the
9 public interest.” Id. at 20 (citations omitted). An injunction may only be awarded upon a clear
10 showing that the plaintiff is entitled to relief. Id. at 22 (citation omitted).

11 Federal courts are courts of limited jurisdiction and, in considering a request for
12 injunctive relief, the Court is bound by the requirement that as a preliminary matter, it have
13 before it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102, 103
14 S.Ct. 1660, 1665 (1983); Valley Forge Christian Coll. v. Ams. United for Separation of Church
15 and State, Inc., 454 U.S. 464, 471, 102 S.Ct. 752, 757-58 (1982). If the Court does not have an
16 actual case or controversy before it, it has no power to hear the matter in question. Lyons, 461
17 U.S. at 102; Valley Forge Christian Coll., 454 U.S. at 471. Thus, “[a] federal court may issue
18 an injunction [only] if it has personal jurisdiction over the parties and subject matter
19 jurisdiction over the claim; it may not attempt to determine the rights of persons not before the
20 court.” Zepeda v. United States Immigration Service, 753 F.2d 719, 727 (9th Cir. 1985).

21 Requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the
22 Prison Litigation Reform Act, which requires that the Court find the “relief [sought] is
23 narrowly drawn, extends no further than necessary to correct the violation of the Federal right,
24 and is the least intrusive means necessary to correct the violation of the Federal right.”

25 **Discussion**

26 Plaintiff is presently incarcerated at Mule Creek State Prison in Ione, California, he
27 seeks a court order protecting him from unlawful conduct by Stanislaus County Sheriff’s
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1 Department deputies upon his release from state prison which is scheduled to occur in
2 November of 2018.

3 The court lacks jurisdiction to issue the order sought by Plaintiff because the order
4 requested by Plaintiff would not remedy any of the claims upon which this case proceeds. This
5 action is proceeding against defendants Tiexiera and McCarthy for retaliation based on events
6 occurring back in December 2016. Plaintiff now requests a court order protecting him from
7 present and future actions by defendants and other deputy sheriffs who are in other pending
8 actions. Because such an order would not remedy any of the claims in this case based upon
9 events occurring in December 2016, the court lacks jurisdiction to issue the order sought by
10 Plaintiff, and Plaintiff's motion must be denied.

11 **III. CONCLUSION AND RECOMMENDATIONS**

12 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that Plaintiff's motion
13 for preliminary injunctive relief, filed on March 1, 2018, be DENIED for lack of jurisdiction.

14 These findings and recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
16 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file
17 written objections with the court. Such a document should be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
19 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
20 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
21 (9th Cir. 1991)).

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23 IT IS SO ORDERED.

24 Dated: March 19, 2018

/s/ Gary S. Austin
25 UNITED STATES MAGISTRATE JUDGE