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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ERIK ABELINO MARCELENO,

12 Plaintiff,

13 vs.

14 CALIFORNIA DEPARTMENT OF
15 CORRECTIONS AND
REHABILITATION, et al.,

16 Defendants.
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1:17-cv-01136-LJO-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF BE DENIED
(ECF No. 11.)

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

19 **I. BACKGROUND**

20 Erik Abelino Marceleno ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*
21 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the
22 Complaint commencing this action on August 23, 2017, against defendant J. M. Mora
23 (Transportation Officer) for events occurring in August 2016 at Wasco State Prison. (ECF No.
24 1.) The Complaint awaits the court's requisite screening under 28 U.S.C. § 1915A.

25 On December 22, 2017, Plaintiff filed a request for a court order protecting him from
26 present and future harassment, assault, and threats by defendant Mora in retaliation for Plaintiff
27 filing a civil rights complaint against defendant Mora. (ECF No. 11.) The court construes
28 Plaintiff's request as a motion for preliminary injunctive relief.

1 **II. PRELIMINARY INJUNCTIVE RELIEF**

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

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

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

23 **Discussion**

24 Plaintiff seeks a court order protecting him from retaliatory conduct by defendant Mora
25 because Plaintiff filed a lawsuit against defendant Mora.

26 The court lacks jurisdiction to issue the order sought by Plaintiff as the order requested
27 by Plaintiff would not remedy any of the claims upon which this case proceeds. Plaintiff brings
28 claims against defendant Mora in this case based on events occurring in August 2016 at Wasco

1 State Prison. Plaintiff now requests a court order protecting him from present and future
2 actions by defendant Mora. Because such an order would not remedy any of the claims in this
3 case based upon events occurring in August 2016, the court lacks jurisdiction to issue the order
4 sought by Plaintiff, and Plaintiff's motion must be denied.

5 **III. CONCLUSION AND RECOMMENDATIONS**

6 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that Plaintiff's motion
7 for preliminary injunctive relief, filed on December 22, 2017, be DENIED for lack of
8 jurisdiction.

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

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18 IT IS SO ORDERED.

19 Dated: March 21, 2018

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE