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8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 JOSE ANTONIO MARTINEZ,

12 Plaintiff,

13 vs.

14 M. NAVARRO, et al.,

15 Defendants.  
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**1:19-cv-00378-NONE-GSA-PC**

**FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTIVE RELIEF BE DENIED  
(ECF No. 36.)**

**OBJECTIONS, IF ANY, DUE WITHIN  
FOURTEEN DAYS**

20 **I. BACKGROUND**

21 Jose Antonio Martinez ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*  
22 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with  
23 Plaintiff's original complaint filed on March 22, 2019, against defendants Sergeant M. Navarro,  
24 C/O Navarro, C/O E. Mares, and C/O Cruz ("Defendants"), for use of excessive force in violation  
25 of the Eighth Amendment. (ECF No. 1.)

26 On May 6, 2021, Plaintiff filed a motion for removal of C/O D. Navarro from 4A Yard,  
27 and to keep all staff involved away from Plaintiff. (ECF No. 36.) On May 25, 2021, Defendants  
28 filed an opposition to the motion. (ECF No. 37.)

1 The motion is now before the court. L.R. 230(l). The court construes this motion as a  
2 motion for preliminary injunctive relief, or a temporary restraining order.

3 **II. PRELIMINARY INJUNCTIVE RELIEF**

4 Procedurally, a federal district court may issue emergency injunctive relief only if it has  
5 personal jurisdiction over the parties and subject matter jurisdiction over the lawsuit. See  
6 Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999) (noting that one  
7 “becomes a party officially, and is required to take action in that capacity, only upon service of  
8 summons or other authority-asserting measure stating the time within which the party served  
9 must appear to defend). Furthermore, the pendency of this action does not give the Court  
10 jurisdiction over prison officials in general. Summers v. Earth Island Inst., 555 U.S. 488, 491–  
11 93 (2009); Mayfield v. United States, 599 F.3d 964, 969 (9th Cir. 2010). The Court’s jurisdiction  
12 is limited to the parties in this action and to the viable legal claims upon which this action is  
13 proceeding. Summers, 555 U.S. at 491–93; Mayfield, 599 F.3d at 969. The court may not attempt  
14 to determine the rights of persons not before it. See, e.g., Hitchman Coal & Coke Co. v. Mitchell,  
15 245 U.S. 229, 234–35, 38 S.Ct. 65, 62 L.Ed. 260 (1916); Zepeda v. INS, 753 F.2d 719, 727–28  
16 (9th Cir. 1983); Lathrop v. Unidentified, Wrecked & Abandoned Vessel, 817 F.Supp. 953, 961  
17 (M.D. Fl. 1993); Kandlbinder v. Reagan, 713 F.Supp. 337, 339 (W.D. Mo. 1989); Suster v.  
18 Marshall, 952 F. Supp. 693, 701 (N.D. Ohio 1996); see also Califano v. Yamasaki, 442 U.S. 682,  
19 702, 99 S.Ct. 2545, 61 L.Ed.2d 176 (1979) (injunctive relief must be “narrowly tailored to give  
20 only the relief to which plaintiffs are entitled”). Under Federal Rule of Civil Procedure 65(d)(2)  
21 an injunction binds only “the parties to the action,” their “officers, agents, servants, employees,  
22 and attorneys,” and “other persons who are in active concert or participation.” Fed. R. Civ. P.  
23 65(d)(2)(A)-(C).

24 A temporary restraining order is an extraordinary measure of relief that a federal court  
25 may impose without notice to the adverse party if, in an affidavit or verified complaint, the  
26 moving party “clearly show[s] that immediate and irreparable injury, loss, or damage will result  
27 to the movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A).  
28 The substantive purpose of a TRO is to preserve the status quo before a preliminary injunction

1 hearing may be held; its provisional remedial nature is designed merely to prevent irreparable  
2 loss of rights prior to judgment. Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto  
3 Truck Drivers, 415 U.S. 423, 439, 94 S.Ct. 1113, 39 L.Ed.2d 435 (1974). But the legal standard  
4 that applies to a motion for a TRO is the same as a motion for a preliminary injunction. See  
5 Stuhlbarg Int’l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001).

6 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter  
7 v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008) (citation omitted); Epona v. Cty. of Ventura,  
8 876 F.3d 1214, 1227 (9th Cir. 2017) (same). “A plaintiff seeking a preliminary injunction must  
9 establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in  
10 the absence of preliminary relief, that the balance of equities tips in his favor, and that an  
11 injunction is in the public interest.” Winter, 555 U.S. at 20 (citations omitted). An injunction  
12 may only be awarded upon a clear showing that the plaintiff is entitled to relief. Id. at 22 (citation  
13 omitted). “Under Winter, plaintiffs must establish that irreparable harm is *likely*, not just  
14 possible, in order to obtain a preliminary injunction.” Alliance for the Wild Rockies v. Cottrell,  
15 632 F.3d 1127, 1131 (9th Cir. 2011).

16 Requests for prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the  
17 Prison Litigation Reform Act, which requires that the court find the “relief [sought] is narrowly  
18 drawn, extends no further than necessary to correct the violation of the Federal right, and is the  
19 least intrusive means necessary to correct the violation of the Federal right.” Section 3626(a)(2)  
20 also places significant limits upon a court’s power to grant preliminary injunctive relief to  
21 inmates. “Section 3626(a) therefore operates simultaneously to restrict the equity jurisdiction of  
22 federal courts and to protect the bargaining power of prison administrators – no longer may courts  
23 grant or approve relief that binds prison administrators to do more than the constitutional  
24 minimum.” Gilmore v. People of the State of California, 220 F.3d 987, 999 (9th Cir. 2000).

### 25 **III. PARTIES’ POSITIONS**

26 Plaintiff seeks to have all staff involved on a “keep away” status during this case because  
27 they have a habit of encouraging violence against inmates with their “friends” who work on  
28 Plaintiff’s yard. (ECF No. 36 ¶ 1.) Plaintiff asserts that these “friends” have a tendency to beat

1 up inmates, so Plaintiff is always on “high alert” when D. Navarro is walking around on 4A Yard.  
2 (Id.) Plaintiff argues that D. Navarro should be moved because Plaintiff is in R.C.G.P and is  
3 A.D.A. and therefore cannot be transferred, but D. Navarro can be placed on another yard.

4 In opposition, Defendants argue that Plaintiff’s motion should be denied because the court  
5 does not have jurisdiction over “all staff;” is not supported by an affidavit; and Plaintiff fails to  
6 provide specific facts showing that he is entitled to the requested relief.

7 Defendants assert that Plaintiff has not identified the other officers or “all staff,” and the  
8 court does not have jurisdiction over non-parties; no details to explain what “habit of encouraging  
9 violence” Plaintiff is referencing; and no facts about any other altercations with other inmates or  
10 whether those altercations had anything to do with Plaintiff or this case. Defendants argue that  
11 Plaintiff’s motion is based purely on speculation and unsupported by articulable facts.

#### 12 **IV. DISCUSSION**

13 First, the court cannot opine at this early stage of the proceedings whether Plaintiff is  
14 likely to succeed on the merits of his claims. Second, while defendant D. Navarro has appeared  
15 in this case, the “other staff” referred to by Plaintiff are not identified and the court does not have  
16 jurisdiction over them to order injunctive relief that would require them to take action or refrain  
17 from acting. Zepeda v. United States Immigration & Naturalization Serv., 753 F.2d 719, 727  
18 (9th Cir. 1985) (“A federal court may issue an injunction if it has personal jurisdiction over the  
19 parties and subject matter jurisdiction over the claim; it may not attempt to determine the rights  
20 of persons not before the court.”). Third, Plaintiff has not alleged facts showing that he is likely  
21 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in  
22 his favor, or that an injunction is in the public interest.

23 Plaintiff has not shown that he is entitled to the preliminary relief he requests and  
24 therefore, his motion should be denied.

#### 25 **IV. RECOMMENDATIONS AND CONCLUSION**

26 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that Plaintiff’s motion for  
27 preliminary injunctive relief, filed on May 6, 2021, should be DENIED.  
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