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

ALLEN HAMMLER,  
  
                                Plaintiff,  
  
                    v.  
  
SCOTT KERNAN, et al.,  
  
                                Defendants.

Case No. 1:19-cv-00497-SAB (PC)  
  
**ORDER DIRECTING CLERK OF COURT TO  
RANDOMLY ASSIGN DISTRICT JUDGE TO  
ACTION**  
  
**FINDINGS AND RECOMMENDATION  
REGARDING PLAINTIFF’S MOTION FOR  
PRELIMINARY INJUNCTION**  
  
(ECF No. 10)  
  
**FOURTEEN (14) DAY DEADLINE**

Plaintiff Allen Hammler is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. On March 14, 2019, Plaintiff filed the instant action in the United States District Court for the Eastern District of California, Sacramento Division. (ECF No. 1.) On April 17, 2019, the instant action was transferred to this Court. (ECF No. 12.)

Currently before the Court is Plaintiff’s motion for preliminary injunction, filed on April 8, 2019. (ECF No. 10.) On April 12, 2019, Plaintiff filed an addendum to his motion for preliminary injunction. (ECF No. 11.) Plaintiff asserts that he witnessed a murder weapon being conveyed to the killer, heard directions about how to commit the murder being given to the killer, witnessed the on duty Tower correctional officer ignore the sounds that the victim was making while the murder

1 was occurring, witnessed the Floor correctional officer speaking to the murderer approximately 45  
2 minutes after the murder was committed, and he witnessed the correctional officers simply leaving  
3 the area after their shift was over without reporting the murder. Plaintiff contends that, due to the  
4 fact that he witnessed those events, prison officials at California State Prison, Corcoran are trying  
5 to “get rid” of him by suspending the remainder of his Security Housing Unit (“SHU”) term and  
6 transferring him to a Sensitive Needs Yard at another prison even though he has safety concerns  
7 about being housed at any gang-infested Sensitive Needs Yard facility. Plaintiff seeks an injunction  
8 ordering Defendant(s), their successor(s) in office, agents, and employees to retain Plaintiff in a  
9 single cell in the California State Prison, Corcoran Security Housing Unit effective immediately  
10 and continuing until the trial of this case occurs.

## 11 I. 12 DISCUSSION

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

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

26 Federal courts are courts of limited jurisdiction and in considering a request for preliminary  
27 injunctive relief, the Court is bound by the requirement that as a preliminary matter, it have before  
28 it an actual case or controversy. City of Los Angeles v. Lyons, 461 U.S. 95, 102 (1983); Valley

1 Forge Christian Coll. V. Ams. United for Separation of Church and State, Inc., 454 U.S. 464, 471  
2 (1982). If the Court does not have an actual case or controversy before it, it has no power to hear  
3 the matter in question. Id. Requests for prospective relief are further limited by 18 U.S.C. §  
4 3626(a)(1)(A) of the Prison Litigation Reform Act, which requires that the Court find the “relief  
5 [sought] is narrowly drawn, extends no further than necessary to correct the violation of the Federal  
6 right, and is the least intrusive means necessary to correct the violation of the Federal right.”

7 A federal court may issue emergency injunctive relief only if it has personal jurisdiction  
8 over the parties and subject matter jurisdiction over the lawsuit. See Murphy Bros., Inc. v.  
9 Michetti Pipe Stringing, Inc., 526 U.S. 344, 350 (1999) (noting that one “becomes a party  
10 officially, and is required to take action in that capacity, only upon service of summons or other  
11 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).

15 First, the Court has yet to screen Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A, and  
16 no Defendant has been served or appeared in this action. Accordingly, the Court does not have  
17 personal jurisdiction over the persons he seeks to enjoin. Fed. R. Civ. P. 65(a)(1), (d)(2); Murphy  
18 Bros., Inc., 526 U.S. at 350. Second, there is an insufficient basis to find that Plaintiff is likely to  
19 prevail on the merits or that he faces any immediate or irreparable injury in the absence of  
20 extraordinary injunctive relief. Winter, 555 U.S. at 20. Accordingly, Plaintiff’s motion for  
21 preliminary injunction should be denied.

## 22 **II.**

### 23 **CONCLUSION**

24 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a  
25 Fresno District Judge to this action.

26 Further, for the reasons explained above, it is HEREBY RECOMMENDED that Plaintiff’s  
27 motion for preliminary injunction, (ECF No. 10), be DENIED.

28 These Findings and Recommendation will be submitted to the United States District Judge

1 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**  
2 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written  
3 objections with the court. The document should be captioned “Objections to Magistrate Judge’s  
4 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the  
5 specified time may result in the waiver of the “right to challenge the magistrate’s factual findings”  
6 on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
7 F.2d 1391, 1394 (9th Cir. 1991)).

8  
9 IT IS SO ORDERED.

10 Dated: **April 24, 2019**

  
UNITED STATES MAGISTRATE JUDGE