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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

AARON D. MCCOY,  
Plaintiff,  
v.  
D. TORRES, et al.,  
Defendants.

Case No. 1:19-cv-01023-NONE-JLT (PC)

**FINDINGS AND RECOMMENDATIONS  
TO DENY PLAINTIFF’S MOTION FOR  
TEMPORARY RESTRAINING ORDER  
OR PRELIMINARY INJUNCTION**

(Doc. 32)

14-DAY DEADLINE

Before the Court is Plaintiff’s “motion for preliminary injunction and/or temporary restraining order due to Plaintiff’s high risk to COVID-19.” (Doc. 32.) For the reasons set forth below, the Court recommends that Plaintiff’s motion be denied.

**I. BACKGROUND**

This action proceeds on Plaintiff’s claims of excessive force and deliberate indifference to serious medical needs under 42 U.S.C. § 1983, based on a pepper-spraying incident that occurred at Kern Valley State Prison (KVSP) in July of 2017. (See Docs. 1, 11, 16, 19.)

On September 21, 2020, Plaintiff filed the instant motion, requesting that the Court order the secretary of the California Department of Corrections and Rehabilitation or the warden of Pelican Bay State Prison (PBSP), where Plaintiff is currently incarcerated, to transfer him to a different prison or release him from custody. (Doc. 32.) Plaintiff alleges the risk of contracting COVID-19 at PBSP poses “a direct threat to his health.” (Id. at 1.) Defendants filed an opposition

1 to Plaintiff’s motion on October 7, 2020 (Doc. 34), to which Plaintiff filed a reply (Doc. 35). The  
2 motion is submitted.

3 **II. DISCUSSION**

4 “A preliminary injunction is an extraordinary remedy never awarded as of right.”<sup>1</sup> *Winter*  
5 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). “A plaintiff seeking a  
6 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to  
7 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his  
8 favor, and that an injunction is in the public interest.” *Id.* at 20.

9 In addition, a “federal court may issue an injunction [only] if it has personal jurisdiction  
10 over the parties and subject matter jurisdiction over the claim; it may not attempt to determine the  
11 rights of persons not before the court.” *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).  
12 “[A]n injunction must be narrowly tailored ‘to affect only those persons over which it has power,’  
13 ... and to remedy only the specific harms shown by the plaintiffs, rather than ‘to enjoin all  
14 possible breaches of the law.’” *Price v. City of Stockton*, 390 F.3d 1105, 1117 (9th Cir. 2004)  
15 (quoting *Zepeda*, 753 F.2d at 727, 728 n.1).

16 In their opposition to Plaintiff’s motion, Defendants contend that “the Court lacks  
17 jurisdiction over the Warden and Secretary who would carry out Plaintiff’s request.” (Doc. 34 at  
18 1.) The Court agrees. The defendants in this action are correctional officers at Kern Valley State  
19 Prison, whom Plaintiff sues for an alleged pepper-spraying incident at KVSP in 2017. Plaintiff  
20 does not sue any officials at CDCR or PBSP. The Court, therefore, lacks jurisdiction over the  
21 secretary of CDCR and the warden of PBSP.

22 Additionally, Plaintiff’s requested injunction is unrelated to the claims in this lawsuit.  
23 Plaintiff’s operative claims are for excessive force and deliberate indifference, based on the July  
24 2017 pepper-spraying incident at KVSP. (Docs. 1, 11, 19.) Plaintiff’s claims are unrelated to the  
25 COVID-19-related issues at PBSP that Plaintiff raises in the instant motion. The claims and  
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27 <sup>1</sup> “The standard for a [temporary restraining order] is the same as for a preliminary injunction.” *Rovio Entm’t Ltd. v.*  
28 *Royal Plush Toys, Inc.*, 907 F. Supp. 2d 1086, 1092 (N.D. Cal. 2012) (citing *Stuhlberg Int’l Sales Co. v. John D.*  
*Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)) (citation omitted). Therefore, the Court considers Plaintiff’s  
request for a temporary restraining order and a preliminary injunction simultaneously.

1 requested relief in Plaintiff’s motion are therefore outside the scope of this lawsuit. As explained  
2 above, “an injunction must be narrowly tailored ... to remedy only the specific harms shown by  
3 the plaintiff[], rather than ‘to enjoin all possible breaches of the law.’” Price, 390 F.3d at 1117  
4 (citation omitted). “When a plaintiff seeks injunctive relief based on claims not pled in the  
5 complaint, the court does not have the authority to issue an injunction.” Pac. Radiation Oncology,  
6 LLC v. Queen’s Med. Ctr., 810 F.3d 631, 633 (9th Cir. 2015).

7 “The purpose of a preliminary injunction is merely to preserve the relative positions of the  
8 parties until a trial on the merits can be held.” Univ. of Texas v. Camenisch, 451 U.S. 390, 395  
9 (1981). The relief that Plaintiff seeks goes well behind that to which he would be entitled if he  
10 were to succeed at trial in this case. “Because the Court only has jurisdiction over the operative  
11 claims in the Complaint, it lacks the ability to provide the relief Plaintiff seeks in the [motion for  
12 preliminary] injunction.” Smith v. Rios, No. 1:10-cv-1554-AWI-MJS, 2010 WL 4603959, at \*2  
13 (E.D. Cal. 2010) (citations omitted). Put another way, Plaintiff’s requested relief would not  
14 remedy the wrongs alleged his complaint. See id.

### 15 **III. CONCLUSION AND RECOMMENDATION**

16 For the reasons set forth above, the Court **RECOMMENDS** that Plaintiff’s motion for a  
17 preliminary injunction or a temporary restraining order (Doc. 32) be **DENIED**. These Findings  
18 and Recommendations will be submitted to the district judge assigned to this case, pursuant to the  
19 provisions of 28 U.S.C. section 636(b)(1). **Within 14 days** of the date of service of these Findings  
20 and Recommendations, Plaintiff may file written objections with the Court. The document should  
21 be captioned, “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file  
22 objections within the specified time may result in waiver of rights on appeal. Wilkerson v.  
23 Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th  
24 Cir. 1991)).

25  
26 IT IS SO ORDERED.

27 Dated: November 21, 2020

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE