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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL JOHN DENHAM,
Plaintiff,
vs.
STU SHERMAN, et al.,
Defendants.

1:19-cv-01176-DAD-GSA-PC
**FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT PLAINTIFF’S
MOTION FOR TEMPORARY
RESTRAINING ORDER BE DENIED**
(ECF No. 21.)
**OBJECTIONS, IF ANY, DUE WITHIN
FOURTEEN (14) DAYS**

I. BACKGROUND

Paul John Denham (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On August 29, 2019, Plaintiff filed the Complaint commencing this action. (ECF No. 1.) On October 17, 2019, the court screened the Complaint under 28 U.S.C. § 1915A and issued an order dismissing the Complaint for violation of Rule 8(a) of the Federal Rules of Civil Procedure, with leave to amend. (ECF No. 13.) On November 18, 2019, Plaintiff filed the First Amended Complaint, which awaits the requisite screening by the court under 28 U.S.C § 1915. (ECF No. 19.)

1 On November 18, 2019, Plaintiff filed a motion for a temporary restraining order, which
2 is now before the court. (ECF No. 21.)

3 **II. TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

4 A temporary restraining order is an extraordinary measure of relief that a federal court
5 may impose without notice to the adverse party if, in an affidavit or verified complaint, the
6 movant “clearly show[s] that immediate and irreparable injury, loss, or damage will result to the
7 movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The
8 standard for issuing a temporary restraining order is essentially the same as that for issuing a
9 preliminary injunction. Stuhlbarg Int’l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7
10 (9th Cir. 2001) (stating that the analysis for temporary restraining orders and preliminary
11 injunctions is “substantially identical”).

12 “A plaintiff seeking a preliminary injunction must establish [(1)] that he is likely to
13 succeed on the merits, [(2)] that he is likely to suffer irreparable harm in the absence of
14 preliminary relief, [(3)] that the balance of equities tips in his favor, and [(4)] that an injunction
15 is in the public interest.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)
16 (citations omitted). The Ninth Circuit has held that “‘serious questions going to the merits’ and
17 a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary
18 injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and
19 that the injunction is in the public interest,” even if the moving party cannot show that he is likely
20 to succeed on the merits. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th
21 Cir. 2011). Under either formulation of the principles, preliminary injunctive relief should be
22 denied if the probability of success on the merits is low. Johnson v. Cal. State Bd. of
23 Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995) (“[E]ven if the balance of hardships tips
24 decidedly in favor of the moving party, it must be shown as an irreducible minimum that there is
25 a fair chance of success on the merits.” (quoting Martin v. Int’l Olympic Comm., 740 F.2d 670,
26 675 (9th Cir. 1984))).

27 A district court has no authority to grant relief in the form of a temporary restraining order
28 or preliminary injunction where it has no jurisdiction over the parties. Ruhrgas AG v. Marathon

1 Oil Co., 526 U.S. 574, 584 (1999) (“Personal jurisdiction, too, is an essential element of the
2 jurisdiction of a district . . . court, without which the court is powerless to proceed to an
3 adjudication.” (alteration in original) (citation and internal quotation omitted)); Paccar Int’l, Inc.
4 v. Commercial Bank of Kuwait, S.A.K., 757 F.2d 1058, 1061 (9th Cir. 1985) (vacating district
5 court’s order granting preliminary injunction for lack of personal jurisdiction).

6 **Discussion**

7 Plaintiff requests “a preliminary injunction enjoining defendants . . . cease use of the
8 SATF Facility E dining hall for the feeding of prisoners; and, (b) to cease the storage of prisoner
9 food trays directly under a damaged ceiling at the SATF Facility E dining hall.” (ECF No. 21 at
10 12.)

11 In this case, there is no complaint on file in which the court has found cognizable claims.
12 Therefore, at this stage of the proceedings the court cannot opine that Plaintiff is likely to succeed
13 on the merits of his claims. Furthermore, no defendants have yet appeared in this action and the
14 court does not have jurisdiction to order injunctive relief which would require directing
15 individuals who are not before the court to take action. Zepeda v. United States Immigration &
16 Naturalization Serv., 753 F.2d 719, 727 (9th Cir. 1985) (“A federal court may issue an injunction
17 if it has personal jurisdiction over the parties and subject matter jurisdiction over the claim; it
18 may not attempt to determine the rights of persons not before the court.”).

19 Therefore, Plaintiff’s motion must be denied at this juncture. Plaintiff is not precluded
20 from renewing the motion at a later stage of the proceedings.

21 **III. CONCLUSION AND RECOMMENDATIONS**

22 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that Plaintiff’s motion for
23 preliminary injunctive relief, filed on November 18, 2019, be DENIED, without prejudice.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
26 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file
27 written objections with the court. Such a document should be captioned “Objections to
28 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file

1 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.
2 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394
3 (9th Cir. 1991)).

4
5 IT IS SO ORDERED.

6 Dated: March 30, 2020

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