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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID W. WILSON,
Plaintiff,
v.
STUART SHERMAN, et al.,
Defendants.

Case No.: 1:22-cv-00874 JLT SKO (PC)

**FINDINGS AND RECOMMENDATIONS TO
DENY PENDING MOTIONS FOR
INJUNCTIVE RELIEF**

(Docs. 2 & 11)

14-DAY OBJECTION PERIOD

Plaintiff David W. Wilson is appearing *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

I. PENDING MOTIONS FOR INJUNCTIVE RELIEF

Pending before the Court are the following: (1) “Motion to Grant Temporary and Permanent Injunction and Protections and Enforcement and Sanctions Relief for Inadequate Cool Ventilation and Black Mold Imminent Danger” (Doc. 2) filed July 15, 2022; and (2) “Motion to Grant Emergency Temporary Injunction to Remove Over-Crowded Double Bunked Inmates ... Causing Black Mold Imminent Danger and Staff/Administration Conspiracy for Mexican Ethnic Numbers Gang Bunks Control for Assaults and Death Denying Population Reduction 137.5% Three-Judge Panel and Denial Equal Access ADA Medical Bunks and Toilets” (Doc. 11) filed January 17, 2023.

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1 **II. DISCUSSION**

2 **A. Legal Standards**

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

8 Federal courts are courts of limited jurisdiction and in considering a request for
9 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary matter, it
10 have before it an actual case or controversy. *City of L.A. v. Lyons*, 461 U.S. 95, 102 (1983);
11 *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S.
12 464, 471 (1982). If the Court does not have an actual case or controversy before it, it has no
13 power to hear the matter in question. *Id.* Requests for prospective relief are further limited by 18
14 U.S.C. § 3626(a)(1)(A) of the Prison Litigation Reform Act, which requires that the Court find
15 the “relief [sought] is narrowly drawn, extends no further than necessary to correct the violation
16 of the Federal right, and is the least intrusive means necessary to correct the violation of the
17 Federal right.” *See also Miller v. French*, 530 U.S. 327, 333 (2000) (the PLRA “establishes
18 standards for the entry and termination of prospective relief in civil actions challenging conditions
19 at prison facilities”).

20 The pendency of this action does not give the Court jurisdiction over prison officials in
21 general. *Summers v. Earth Island Inst.*, 555 U.S. 488, 491-93 (2009); *Mayfield v. United States*,
22 599 F.3d 964, 969 (9th Cir. 2010). The Court's jurisdiction is limited to the parties in this action
23 and to the viable legal claims upon which this action is proceeding. *Summers*, 555 U.S. at 491-93;
24 *Mayfield*, 599 F.3d at 969.

25 //

26 _____
27 ¹ “The standard for a [temporary restraining order] is the same as for a preliminary injunction.” *Rovio*
28 *Entm’t Ltd. v. 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).

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

8 **B. Summary of Plaintiff’s Motions²**

9 In his first motion for injunctive relief (Doc. 2), Plaintiff contends an ongoing imminent
 10 danger of inadequate ventilation, the presence of black mold and black dust, and the denial of
 11 cooling measures and objects. (*Id.* at 3.) Plaintiff alleges he “has shown the sliding scale tips in
 12 his favor and a significant threat of irreparable injury to himself or others” exists. (*Id.* at 4.)
 13 Plaintiff cites to a number of cases, including “Plata v. Newsom,” “Coleman v. [N]ewsom,”
 14 “Armstrong v. Brown,” and “Plata v. Brown.” (*Id.*) Under the subheading “Irreparable Injury,”
 15 Plaintiff cites to various exhibits and quotes from various orders or opinions in other matters. (*Id.*
 16 at 4-5.) Plaintiff contends “prison officials are obligated to provide water, and it must be fit to
 17 drink,” citing to Ninth Circuit authority. (*Id.* at 5.) Under the subheading “Some Evidence,”
 18 Plaintiff cites to an exhibits and Supreme Court authority pertaining to significant hardship,
 19 “Conscious Choice among alternatives,” “Official gov’t policy,” and “TRAINING as Basis for
 20 Liability.” (*Id.* at 6.) Plaintiff provides a declaration in support of his motion. (*Id.* at 7-8.)³

21 In his second motion for injunctive relief (Doc. 11), Plaintiff contends ongoing imminent
 22 danger of overcrowding in B Facility at the California Substance Abuse Treatment Facility. (*Id.* at
 23 2.) He contends all four facilities are overcrowded “to placate Mexican Gangs AK Southerners,
 24

25 ² In both motions, Plaintiff attempts to notice his motions for a hearing. (*See* Doc. 2 at 1[“on August 20,
 26 2022, at 9:30 a.m., . . .] & Doc. 11 at 1 [“on February 9, 2023 at 9:30 a.m., . . .].) However, as Plaintiff has
 27 been advised, “[a]ll pre-trial motions will be submitted for decision based solely on the written papers and
 28 without a hearing. Local Rule 230(l).” (*See* Doc. 3 at 5 [First Informational Order].) Plaintiff is not entitled
 to a hearing on his motions; should this Court wish to hear from a party or parties on any matter in a
 prisoner civil rights case, the Court will set a hearing.

³ Despite referencing exhibits in this motion, no exhibits were provided to or filed with the Court.

1 Bottom Tiers mainly & Northerners, Upper Tiers mainly.” (*Id.*) Plaintiff asserts the
2 administration and building staff placements result in overcrowding that negatively affects users
3 of wheelchairs, walkers and those with other disabilities. (*Id.* at 2-3.) An inadequate number of
4 toilets are available, denying access for those using wheelchairs, walkers and “Fluid-Bags.” (*Id.* at
5 3.) Plaintiff contends due to the integration of “Gang Fresno Bulldogs,” and assault occurred on
6 November 30, 2022 “for injuries & Death” as a result of the overcrowding. (*Id.*) Plaintiff asserts
7 the overcrowding “is unequal housing and used for Gang Politics Bunk Bed Control of other
8 races as Blacks/African American and violates Three judge Panel population reductions of 137%
9 for each prison.” (*Id.*) Plaintiff further contends there is an ongoing imminent danger of “BLACK
10 MOLD seen throughout the Facilities, and a TOXIC Health HAZARD, as allowed by the 95%
11 Mexican/Hispanic White Supremacy Staff B-Facility.” (*Id.*) Plaintiff alleges he “has shown the
12 sliding scale tips in his favor and a significant threat of irreparable injury to himself or others”
13 exists. (*Id.* at 4.)

14 Plaintiff cites to a number of cases, including “Plata v. Newsom,” “Coleman v.
15 [N]ewsom,” “Armstrong v. Brown,” and “Plata v. Brown.” (*Id.*) Under the subheading
16 “Irreparable Injury,” Plaintiff cites to various exhibits and quotes from various orders or opinions
17 in other matters. (*Id.* at 4-5.) Under the subheading “Some Evidence,” Plaintiff contends he “has
18 shown above for as BLACK MOLD at Director’s Level Granted, and on-going threats by
19 Favoritism to double-bunk Specific Gang members for violence.” (*Id.* at 5.) Plaintiff asserts he
20 has satisfied the “‘case controversy’ requirement” and cites to “City of Los Angeles v. Lyons” in
21 support of his assertion. (*Id.* at 5-6.) Citing to Zepeda, Plaintiff contends “this Court has subject-
22 matter jurisdiction over CSATF claim” and that “any injunction of this Court should not be more
23 burdensome to defendants than necessary to provide complete or partial relief to the plaintiff and
24 others similarly situated.” (*Id.* at 6.) Plaintiff has appended his declaration in support of the
25 motion (*id.* at 8-11), approximately 25 pages of exhibits (*id.* at 12-37) and a proposed order
26 granting relief (*id.* at 38-40). For the foregoing reasons, this Court will recommend Plaintiff’s
27 motions for injunctive relief be denied.

28

1 **C. Analysis**

2 ***Personal Jurisdiction is Lacking***

3 In this case, no defendant in this action has been served with process. Plaintiff’s complaint
4 names Stuart Sherman, Amber Williams, Jan Lines, S. Heahy, E. Rocha, S. Marsh, Jason Collins,
5 “Office of Appeals” and the California Department of Corrections and Rehabilitation as
6 defendants. (Doc. 1 at 1-3.) Plaintiff’s complaint has not yet been screened pursuant to 28 U.S.C.
7 § 1915A(a), and will be screened in due course. Service of process will only occur following
8 screening and a finding that Plaintiff has stated one or more cognizable claims. Until the
9 defendants have been served with process by the United States Marshal, this Court lacks personal
10 jurisdiction over any defendant, and may not grant the injunctive relief Plaintiff requests. *See* Fed.
11 R. Civ. P. 65(d)(2); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999);
12 *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999) (“Personal jurisdiction, too, is an
13 essential element of the jurisdiction of a district...court, without which the court is powerless to
14 proceed to an adjudication” [citation & internal quotation omitted]); *Zepeda*, 753 F.2d at 727;
15 *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986) (“A federal court is without personal
16 jurisdiction over a defendant unless the defendant has been served in accordance with Fed. R.
17 Civ. P. 4”).

18 ***The Winter Factors***

19 Additionally, Plaintiff cannot meet all four *Winter* factors set forth above that are required
20 for an injunction. *Winter*, 555 U.S. at 20. Even construing Plaintiff’s motions to demonstrate
21 Plaintiff is likely to suffer irreparable harm in the absence of preliminary relief—the second
22 *Winter* factor— Plaintiff cannot demonstrate he is likely to succeed on the merits of his claims, a
23 requirement that must be met to obtain injunctive relief. *Winter*, 555 U.S. at 20. In deciding
24 whether a preliminary injunction should issue, the likelihood of success on the merits is the most
25 important factor for the court to consider. *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d
26 848, 856 (9th Cir. 2017).

27 Here, Plaintiff’s complaint has not yet been screened. Therefore, it is unclear whether
28 Plaintiff has stated cognizable claims entitling him to relief in these proceedings. At the pleading

1 stage, the Court is not in a position to determine questions of the claims’ merit which require
2 submission of evidence, versus only a determination as to whether a claim has been plausibly
3 stated. *Barrett v. Belleque*, 544 F.3d 1060, 1062 (9th Cir. 2008). Without such a finding that
4 Plaintiff has stated cognizable claims, the likelihood of success on the merits—the first *Winter*
5 factor, and the most important—cannot be determined. Plaintiff’s references to *Plata, Coleman,*
6 and *Armstrong* do not change this analysis.

7 Regarding the requirement that Plaintiff make a showing that the balance of equities tips
8 in his favor and that an injunction is in the public interest—the third and fourth *Winter* factors—
9 Plaintiff makes no such showing. In sum, Plaintiff is not entitled to the injunctive relief he seeks.

10 **III. CONCLUSION AND RECOMMENDATIONS**

11 For the reasons given above, the Court **RECOMMENDS** that Plaintiff’s motions for
12 injunctive relief (Docs. 2 & 11) be **DENIED**.

13 These Findings and Recommendations will be submitted to the United States District
14 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). **Within 14 days** of the date of
15 service of these Findings and Recommendations, a party may file written objections with the
16 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and
17 Recommendations.” Failure to file objections within the specified time may result in waiver of
18 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
19 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

20
21 IT IS SO ORDERED.

22 Dated: **January 18, 2023**

Is/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE