

1 **I. BACKGROUND**

2 Plaintiff filed a complaint in this action on August 15, 2022. (Doc. 1.) At the same time
3 Plaintiff filed the instant motion seeking a TRO requiring Defendants not to confiscate Plaintiff’s
4 property until this matter is decided.

5 In particular, Plaintiff alleges she purchased a JPay tablet for \$120 and approximately
6 \$5,000.00 in music, games, a keyboard, books, videos, and electronic stamps, as well as personal
7 photos and emails. (Doc. 1 at 4.) In 2022, CDCR changed its policy to issue GTL tablets and
8 ordered inmates to send out, destroy, or donate their JPay tablets without compensation. *Id.*
9 Additionally, the Secretary of CDCR changed the policy so that inmates could only possess one
10 tablet. Inmates were told they would be able to transfer paid content to the new GTL tablets.

11 Plaintiff states that she would not have made such purchases had she known that she
12 would not be allowed to keep the JPay tablet or that the tablet was part of a pilot program. (*Id.* at
13 5.) Plaintiff alleges that the taking of her property without compensation violates her due process
14 rights under the Fourteenth Amendment, the Takings Clause of the Fifth Amendment, fraud, and
15 excessive force. (*Id.* at 3–4.)

16 Plaintiff alleges she is entitled to a TRO allowing her to retain possession of her tablet
17 pending disposition of the case.

18 **II. DISCUSSION**

19 **A. Jurisdiction and Rule 65**

20 “A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter*
21 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). The Court’s jurisdiction
22 is limited to the parties in this action and to the viable legal claims upon which this action is
23 proceeding. *Summers v. Earth Island Inst.*, 555 U.S. 488, 491–93 (2009). It may issue preliminary
24 injunctive relief only if personal jurisdiction over the parties and subject matter jurisdiction over
25 the lawsuit have been established. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526
26 U.S. 344, 350 (1999).

27 Under Rule 65, an injunction binds only “the parties to the action,” their “officers, agents,
28 servants, employees, and attorneys,” and “other persons who are in active concert or

1 participation.” Fed. R. Civ. P. 65(d)(2)(A)–(C). The movant must also give “notice to the adverse
2 party” before the Court can issue injunctive relief. *Id.* at 65(a). A putative defendant “becomes a
3 party officially, and is required to take action in that capacity, only upon service of summons or
4 other authority-asserting measure stating the time within which the party must appear to defend.”
5 *Murphy Bros.*, 526 U.S. at 350. The pendency of this action does not give the Court jurisdiction
6 over prison officials in general. *Summers*, 555 U.S. at 491–93.

7 Concurrent with this order, the Court has issued a screening order finding Plaintiff’s
8 complaint fails to state a claim and affording Plaintiff thirty days to respond to the order.
9 Therefore, at this early stage of the proceedings, this case lacks an operative complaint that can be
10 served on Defendants. Without an operative complaint and service on Defendants, there is no
11 case or controversy before the Court, *City of L.A. v. Lyons*, 461 U.S. 95, 102 (1983), and
12 Plaintiff’s request for injunctive relief is premature.

13 **B. Nexus**

14 The injunctive relief sought must be related to the claims brought in the complaint. *See*
15 *Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015). In other
16 words, “there must be a relationship between the injury claimed in the motion for injunctive relief
17 and the conduct asserted in the underlying complaint.” *Id.* at 636 (adopting *Devose v. Herrington*,
18 42 F.3d 470, 471 (8th Cir. 1994)). Absent a nexus between the injury claimed in the motion and
19 the underlying complaint, the Court lacks the authority to grant Plaintiff injunctive relief. *Id.* A
20 preliminary injunction only is appropriate when it grants relief of the same nature as that to be
21 finally granted. *Id.* (citing *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945)).

22 Because Plaintiff’s instant request for a TRO and injunction is closely related to the
23 deprivation alleged in the complaint, the request bears the appropriate nexus.

24 **C. Winter Factors**

25 Even if the motion were properly before the Court, Plaintiff’s request for a preliminary
26 injunction must be denied on the merits. A preliminary injunction may issue only if the movant
27 establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the
28 absence of preliminary relief; (3) that the balance of equities tips in his/her favor; (4) that an

1 injunction is in the public interest. *Winter*, 555 U.S. at 20. The movant bears the burden of
2 satisfying all four prongs. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir.
3 2011).

4 The Court has determined that Plaintiff has failed to state a claim under section 1983
5 primarily because Plaintiff lacks a protected property interest in possessing her JPay tablet while
6 incarcerated at CCWI. Therefore, Plaintiff has not established she is likely to succeed on the
7 merits.

8 As to the second element, an injunction is unavailable absent a showing of irreparable
9 injury, a requirement that cannot be met where there is no showing of any real or immediate
10 threat that the plaintiff will be wronged again—a likelihood of substantial and immediate
11 irreparable injury.” *Lyons*, 461 U.S. at 111 (internal quotation marks and citation omitted).
12 Ordinarily, monetary injury is not irreparable. *See L.A. Mem'l Coliseum Comm'n v. Nat'l Football*
13 *League*, 634 F.2d 1197, 1202 (9th Cir. 1980); *see also Inv'rs v. Bank of Am., NA*, 585 F. App'x
14 742, 742 (9th Cir. 2014) (describing the difference between irreparable harm and that which can
15 be “adequately remedied through money damages.”).

16 Although Plaintiff wishes to keep using the JPay tablet, CDCR will provide Plaintiff with
17 a substitute tablet. While Plaintiff asserts that there is no transfer of content from her tablet to the
18 GTL tablet, she does not allege that she ever attempted to do so. Given her request to retain
19 possession of the JPay tablet, it is unclear whether she has been deprived of the purchased
20 content. Plaintiff seeks alternative relief of compensation for the tablet and its contents.
21 Therefore, she does not demonstrate likelihood of *irreparable* injury.

22 Given the inability of Plaintiff to demonstrate a likelihood of success or a likelihood of
23 irreparable injury, the final two elements for a TRO—whether the balance of equities tips in her
24 favor and whether injunctive relief is in the public’s interest—need not be considered. Plaintiff
25 cannot meet all four *Winter* factors, and thus, she has failed to demonstrate on the merits that a
26 TRO or preliminary injunction should issue.

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1 **III. CONCLUSION**

2 Accordingly, it is hereby RECOMMENDED that the Court DENY Plaintiff’s motion for
3 a temporary restraining order and preliminary injunction (Doc. 4) and DENY as moot Plaintiff’s
4 subsequently-filed copy of the motion.

5 These Findings and Recommendations will be submitted to the United States District
6 Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within fourteen**
7 **(14) days** after being served with these Findings and Recommendations, a party may file written
8 objections with the Court. The document should be titled, “Objections to Magistrate Judge’s
9 Findings and Recommendations.” Parties are advised that failure to file objections within the
10 specified time may result in the waiver of rights on appeal. *Wilkinson v. Wheeler*, 772 F.3d 834,
11 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

12 The Clerk of Court is directed to assign a District Judge to this action.

13 IT IS SO ORDERED.

14 Dated: August 2, 2023

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17 UNITED STATES MAGISTRATE JUDGE

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