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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN EDWARD MITCHELL,  
Plaintiff,  
v.  
J. HAVILAND, et al.,  
Defendants.

No. 2:09-cv-3012 JAM KJN P  
ORDER and  
FINDINGS AND RECOMMENDATIONS

Introduction

Plaintiff is a state prisoner, proceeding without counsel. This civil rights action is proceeding on plaintiff’s claims that, while he was housed at California State Prison-Solano (“CSP-SOL”), defendant Rosario used excessive force on plaintiff on August 5, 2008, and retaliated against plaintiff on November 3, 2008, and that defendants Rosario and McGuire retaliated against plaintiff in early 2009. (ECF No. 169.) On November 12, 2009, plaintiff was transferred from CSP-SOL to the California State Prison in Corcoran (“CSP-COR”). (ECF No. 6.) On April 15, 2011, plaintiff was transferred from CSP-COR to the California Substance Abuse Treatment Facility and State Prison in Corcoran (“SATF”). (ECF No. 39.) On June 11, 2015, plaintiff filed a notice of change of address stating he would be transferred back to CSP-COR on June 8, 2015. (ECF No. 181.) On July 23, 2015, plaintiff filed a document styled, “Order to Show Cause for Preliminary Injunction and Temporary Restraining Order.” (ECF No.

1 190.) Upon review of plaintiff's motion and supporting documents, as set forth more fully below,  
2 the court finds that plaintiff's motion should be denied.

3 Motion for Injunctive Relief

4 Plaintiff's motion for injunctive relief is before the court. (ECF No. 190.) In this 33 page  
5 filing, plaintiff sets forth a laundry list of alleged constitutional violations from April 2009, while  
6 plaintiff was housed at CSP-SOL, to July 15, 2015, while plaintiff was, and remains, housed at  
7 CSP-COR. (ECF No. 190.) Plaintiff claims that as a result of his filing complaints and appeals  
8 concerning the alleged assault by defendant Rosario, plaintiff began to receive all forms of  
9 retaliation. However, plaintiff concedes that while he was housed in the SHU at CSP-COR, he  
10 could not directly connect the officers acting in the 'campaign of harassment' to defendant  
11 Rosario. (ECF No. 190 at 6.) Plaintiff alleges no facts demonstrating a connection between the  
12 incidents he alleges occurred at SATF or at CSP-COR, or between these new allegations and the  
13 allegations proceeding in the instant action. In his motion plaintiff seeks a court order enjoining  
14 the CDCR Director, Warden Davey, CSP-COR; Lt. T. Gonzalez; Correctional Officer Alvarez;  
15 and defendants Rosario and McGuire, from the following:

- 16 1. Withholding or redirecting plaintiff's legal or personal mail;
- 17 2. Not allowing plaintiff to sign off or rescind his request for "SNY" status, keeping him  
18 from returning to the general population;
- 19 3. Confining plaintiff to quarters beyond 10 days without express approval of a warden,  
20 because it deprives plaintiff of law library access or exercise time;
- 21 4. Threatening plaintiff with 'use of force' if he refuses a cellmate that is not being done  
22 for a legitimate purpose;
- 23 5. Retaliating by issuing plaintiff rules violation reports that contain false information or  
24 are manufactured;
- 25 6. Refusing to give plaintiff his religious diet unless a medical doctor prescribes a  
26 medical diet;
- 27 7. Unlawfully confiscating any and all property;
- 28 8. Housing plaintiff with an incompatible cellmate;

1 9. Any and all verbal harassment;

2 10. Defendants Rosario and McGuire be forbidden from contacting the prison where  
3 plaintiff is housed and requesting favors that involve harassment, threats of use of force, or the  
4 assignment of housing that will put plaintiff at risk;

5 11. Transferring plaintiff to High Desert State Prison, Salinas Valley State Prison, or  
6 SATF.

7 Legal Standard for Injunctive Relief

8 Plaintiff seeks a temporary restraining order. A temporary restraining order is an  
9 extraordinary and temporary “fix” that the court may issue without notice to the adverse party if,  
10 in an affidavit or verified complaint, the movant “clearly show[s] that immediate and irreparable  
11 injury, loss, or damage will result to the movant before the adverse party can be heard in  
12 opposition.” See Fed. R. Civ. P. 65(b)(1)(A). The purpose of a temporary restraining order is to  
13 preserve the status quo pending a fuller hearing. See generally, Fed. R. Civ. P. 65; see also, L. R.  
14 231(a). It is the practice of this district to construe a motion for temporary restraining order as a  
15 motion for preliminary injunction. Local Rule 231(a); see also, e.g., Aiello v. OneWest Bank,  
16 2010 WL 406092, \*1 (E.D. Cal. 2010) (providing that “[t]emporary restraining orders are  
17 governed by the same standard applicable to preliminary injunctions”) (citations omitted).

18 The party requesting preliminary injunctive relief must show that “he is likely to succeed  
19 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
20 the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v.  
21 Natural Resources Defense Council, 555 U.S. 7, 20 (2008); Stormans, Inc. v. Selecky, 586 F.3d  
22 1109, 1127 (9th Cir. 2009) (quoting Winter). The propriety of a request for injunctive relief  
23 hinges on a significant threat of irreparable injury that must be imminent in nature. Caribbean  
24 Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

25 Alternatively, under the so-called sliding scale approach, as long as the plaintiff  
26 demonstrates the requisite likelihood of irreparable harm and can show that an injunction is in the  
27 public interest, a preliminary injunction may issue so long as serious questions going to the merits  
28 of the case are raised and the balance of hardships tips sharply in plaintiff’s favor. Alliance for

1 Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011) (concluding that the “serious  
2 questions” version of the sliding scale test for preliminary injunctions remains viable after  
3 Winter).

4 The principal purpose of preliminary injunctive relief is to preserve the court’s power to  
5 render a meaningful decision after a trial on the merits. See 11A Charles Alan Wright & Arthur  
6 R. Miller, Federal Practice and Procedure, § 2947 (2d ed. 2010). As noted above, in addition to  
7 demonstrating that he will suffer irreparable harm if the court fails to grant the preliminary  
8 injunction, plaintiff must show a “fair chance of success on the merits” of his claim. Sports  
9 Form, Inc. v. United Press International, Inc., 686 F.2d 750, 754 (9th Cir. 1982) (internal citation  
10 omitted). Implicit in this required showing is that the relief awarded is only temporary and there  
11 will be a full hearing on the merits of the claims raised in the injunction when the action is  
12 brought to trial. In cases brought by prisoners involving conditions of confinement, any  
13 preliminary injunction “must be narrowly drawn, extend no further than necessary to correct the  
14 harm the court finds requires preliminary relief, and be the least intrusive means necessary to  
15 correct the harm.” 18 U.S.C. § 3626(a)(2).

16 In addition, as a general rule this court is unable to issue an order against individuals who  
17 are not parties to a suit pending before it. Zenith Radio Corp. v. Hazeltine Research, Inc., 395  
18 U.S. 100 (1969).

### 19 Discussion

20 In the instant motion, plaintiff primarily challenges actions that took place at CSP-COR  
21 and SATF, both of which are in the Fresno Division of the Eastern District of California, against  
22 individuals employed at CSP-COR and SATF, who are not named as defendants herein.

23 However, in the operative complaint herein, plaintiff challenges concrete actions taken in 2008  
24 and 2009 at CSP-SOL by defendants Rosario and McGuire. Therefore, the facts underlying  
25 plaintiff’s claims for injunctive relief are unrelated to plaintiff’s claims in this action, and  
26 occurred long after the incidents at issue herein. Plaintiff’s attempts to connect these subsequent  
27 actions to defendant Rosario are not based on factual allegations; rather, they are based on

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1 plaintiff's speculation that such acts are somehow connected to defendant Rosario, despite the  
2 large gap in time and no facts to suggest a connection.

3 As plaintiff was previously advised, this court lacks jurisdiction to address claims not  
4 contained within the operative complaint because the claims will not be given a hearing on the  
5 merits at trial. (See ECF Nos. 30, 72, 124 at 4.)

6 Moreover, plaintiff's claims supporting his motion for injunctive relief are based on  
7 unrelated actions taken by correctional staff not named as defendants herein. "Unrelated claims  
8 against different defendants belong in different suits." George v. Smith, 507 F.3d 605, 607 (7th  
9 Cir. 2007). Thus, this court lacks jurisdiction over the individuals located at CSP-COR and  
10 SATF named in the motion. Plaintiff cannot defeat this jurisdictional hurdle by claiming that  
11 they are somehow related to defendant Rosario, or attempt to link unrelated incidents by  
12 suggesting they are part of a "campaign of harassment." (ECF No. 190 at 6.) In addition,  
13 plaintiff is required to exhaust his administrative remedies as to all claims prior to filing an action  
14 in federal court. Exhaustion in prisoner cases covered by 42 U.S.C. § 1997e(a) is mandatory.  
15 Porter v. Nussle, 534 U.S. 516, 524 (2002).

16 Finally, plaintiff is no longer housed at CSP-SOL, and is therefore no longer subject to  
17 actions by defendants Rosario and McGuire. Thus, motions for injunctive relief against  
18 defendants Rosario and McGuire are moot. Zenith Radio Corp., 395 U.S. at 100. Plaintiff should  
19 not renew motions for injunctive relief in this action because this action proceeds solely as to  
20 plaintiff's claims that arose in 2008 and 2009.

21 That said, the court is concerned that plaintiff is allegedly not receiving a religious diet  
22 and that he believes he is not safe at CSP-COR. But plaintiff must pursue such claims in an  
23 action filed in the Fresno Division of this court, not in the instant action. Moreover, on prior  
24 occasions, plaintiff was advised that this court lacked jurisdiction to hear claims not included in  
25 the operative complaint. (ECF Nos. 30, 72, 119.) Plaintiff delays his ability to obtain relief by  
26 attempting to pursue such unrelated claims in this action. Provided plaintiff has exhausted his  
27 administrative remedies, plaintiff may file a new civil rights action in the Fresno Division of the  
28 Eastern District of California. The Clerk of the Court is directed to send plaintiff the form for

1 filing a civil rights action.

2 The claims on which plaintiff's motion for injunctive relief are predicated are not included  
3 in the operative complaint on which this action is proceeding, and do not raise allegations against  
4 the remaining defendants. For that reason, the claims will not be given a hearing on the merits at  
5 trial. Thus, the court cannot grant plaintiff injunctive relief, and recommends that plaintiff's  
6 motion for such relief be denied. Again, plaintiff is admonished that he should not renew motions  
7 for injunctive relief in this action because this action proceeds solely as to plaintiff's claims that  
8 arose in 2008 and 2009 at CSP-SOL, where plaintiff is no longer housed.


9 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to send  
10 plaintiff the form for filing a civil rights action pursuant to 42 U.S.C. § 1983; and

11 IT IS HEREBY RECOMMENDED that plaintiff's motion for injunctive relief (ECF No.  
12 190) be denied.

13 These findings and recommendations are submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
15 after being served with these findings and recommendations, any party may file written  
16 objections with the court and serve a copy on all parties. Such a document should be captioned  
17 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
18 objections shall be filed and served within fourteen days after service of the objections. The  
19 parties are advised that failure to file objections within the specified time may waive the right to  
20 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: August 6, 2015

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KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE