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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 VERNON REBIDOUX,

No. 2:16-CV-1033-MCE-CMK-P

12 Plaintiff,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 J. MACOMBER, et al.,

15 Defendants.
16 _____/

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the court is plaintiff's motion for injunctive relief (Doc. 2).

19 The legal principles applicable to requests for injunctive relief, such as a
20 temporary restraining order or preliminary injunction, are well established. To prevail, the
21 moving party must show that irreparable injury is likely in the absence of an injunction. See
22 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing Winter v. Natural Res.
23 Def. Council, Inc., 129 S.Ct. 365 (2008)). To the extent prior Ninth Circuit cases suggest a lesser
24 standard by focusing solely on the possibility of irreparable harm, such cases are "no longer
25 controlling, or even viable." Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046,
26 1052 (9th Cir. 2009). Under Winter, the proper test requires a party to demonstrate: (1) he is

1 likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of an
2 injunction; (3) the balance of hardships tips in his favor; and (4) an injunction is in the public
3 interest. See Stormans, 586 F.3d at 1127 (citing Winter, 129 S.Ct. at 374).

4 In this case, plaintiff seeks an order enjoining defendant Macomber from allowing
5 other prison officials to retaliate against plaintiff, deny medical care, prevent family visits, or
6 thwart plaintiff's attempts to exhaust administrative remedies. More specifically, plaintiff states
7 that he faces a safety risk as a witness in two state court murder trials against gang members. It
8 should be noted that no such allegations are contained in the complaint.

9 The court finds that plaintiff cannot satisfy the showing required for injunctive
10 relief. First and foremost, plaintiff has not stated a cognizable claim against defendant
11 Macomber. As discussed in the accompanying order, plaintiff's claim against defendant
12 Macomber is based entirely on a theory of respondeat superior liability. Thus, plaintiff cannot
13 demonstrate any likelihood of success on the merits of his claim against defendant Macomber,
14 who is the only defendant named in the instant motion for injunctive relief. Moreover, the basis
15 for plaintiff's motion is the contention that his safety is at risk. This allegation, however, does
16 not appear in the complaint. For this additional reason, plaintiff has not shown any likelihood of
17 success on the merits of a claim alleged in the complaint. Finally, while plaintiff has indicated
18 the potential for a safety risk, he has not alleged any facts – either in the underlying complaint or
19 in the instant motion – showing the likelihood of irreparable injury absent an injunction.

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1 Based on the foregoing, the undersigned recommends that plaintiff's motion for
2 injunctive relief (Doc. 2) be denied.

3 These findings and recommendations are submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court. Responses to objections shall be filed within 14 days after service of
7 objections. Failure to file objections within the specified time may waive the right to appeal.
8 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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10 DATED: March 8, 2017

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12 **CRAIG M. KELLISON**
13 UNITED STATES MAGISTRATE JUDGE
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