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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LISA MARIE BELYEW,  
Plaintiff,  
v.  
KORY L. HONEA, et al.,  
Defendants.

No. 2:17-cv-0508 KJM AC P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. This matter is before the court on plaintiff’s motions for a temporary restraining order, ECF No. 45, to supplement the first amended complaint, ECF No. 50, and to amend the complaint, ECF No. 52.

I. Motion for Temporary Restraining Order

Plaintiff seeks an ex parte temporary restraining order while she is temporarily housed at the Butte County Jail, to prevent unidentified individuals at the jail from retaliating against her for the instant suit. ECF No. 45. She seeks to enjoin prison officials from stealing or destroying her property, opening her legal mail, and using other inmates to retaliate against her. Id. Plaintiff also requests to be single-celled and to be allowed to keep her radio in the cell. Id.

A. Legal Standard

A temporary restraining order is an extraordinary measure of relief that a federal court

1 may impose without notice to the adverse party only if, in an affidavit or verified complaint, the  
2 movant “clearly show[s] that immediate and irreparable injury, loss, or damage will result to the  
3 movant before the adverse party can be heard in opposition” and the movant “certifies in writing  
4 any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P.  
5 65(b)(1). The standard for issuing a temporary restraining order is otherwise essentially the same  
6 as that for issuing a preliminary injunction. Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.,  
7 240 F.3d 832, 839 n.7 (9th Cir. 2001) (stating that the analysis for temporary restraining orders  
8 and preliminary injunctions is “substantially identical”).

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

24 Finally, an injunction can bind individuals who are not parties to the action only when  
25 they are “officers, agents, servants, employees, and attorneys” of the parties or “are in active  
26 concert or participation with” the parties. Fed. R. Civ. P. 65(d)(2).

27 B. Discussion

28 As an initial matter, plaintiff has not demonstrated that notice should not be required and

1 that she will suffer irreparable injury before defendants' opposition can be heard, nor has she  
2 shown that she has any likelihood of success on the merits. However, even if the court assumes  
3 that plaintiff is likely to succeed on the merits, her contentions of potential future injury are no  
4 more than speculative and are therefore insufficient to demonstrate a risk of immediate and  
5 irreparable injury. Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988)  
6 ("Speculative injury does not constitute irreparable injury sufficient to warrant granting a  
7 preliminary injunction." (citing Goldie's Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472  
8 (9th Cir. 1984))).

9 Although plaintiff claims that unspecified prison officials will steal or destroy her  
10 property and use other inmates to retaliate against her, she has not presented any facts to support  
11 the claim that the anticipated conduct is imminent or even likely. See id. ("A plaintiff must do  
12 more than merely allege imminent harm sufficient to establish standing; a plaintiff must  
13 *demonstrate* immediate threatened injury as a prerequisite to preliminary injunctive relief."  
14 (citing Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League, 634 F.2d 1197, 1201  
15 (9th Cir. 1980))). Moreover, even though plaintiff's motions to supplement and amend the first  
16 amended complaint indicate that she has since suffered some retaliation, ECF Nos. 50, 52, the  
17 harm is not related to the claims in the first amended complaint, see Pac. Radiation Oncology,  
18 LLC v. Queen's Med. Ctr., 810 F.3d 631, 633 (9th Cir. 2015) ("When a plaintiff seeks injunctive  
19 relief based on claims not pled in the complaint, the court does not have the authority to issue an  
20 injunction."). For these reasons, the motion must be denied.

21 Additionally, the court must have jurisdiction over the individuals against whom plaintiff  
22 wishes the restraining order to issue. See Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 584  
23 (1999) ("Personal jurisdiction, too, is an essential element of the jurisdiction of a district . . .  
24 court, without which the court is powerless to proceed to an adjudication." (alteration in original)  
25 (citation and internal quotation omitted)); Paccar Int'l, Inc. v. Com. Bank of Kuwait, S.A.K., 757  
26 F.2d 1058, 1061 (9th Cir. 1985) (vacating district court's order granting preliminary injunction  
27 for lack of personal jurisdiction). However, plaintiff seeks relief against unspecified prison  
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1 officials rather than the named defendants.<sup>1</sup> Furthermore, in her motions to supplement and  
2 amend the first amended complaint, plaintiff identifies several individuals, and two in particular,  
3 as the individuals who are retaliating against her. ECF Nos. 50, 52. To the extent it appears that  
4 plaintiff is seeking an injunction against these individuals, none of them are named defendants to  
5 this action, and there are no facts showing that these individuals are acting “in active concert or  
6 participation” with defendants. See Fed. R. Civ. P. 65(d)(2); Zenith Radio Corp. v. Hazeltine  
7 Rsch., Inc., 395 U.S. 100, 112 (1969) (“a non-party with notice cannot be held in contempt until  
8 shown to be in concert or participation”). Because plaintiff has not requested an injunction  
9 against anyone over whom the court has jurisdiction, the motion must be denied.

## 10 II. Motions to Supplement and Amend the First Amended Complaint

11 Plaintiff has filed motions to supplement and amend the first amended complaint, in  
12 which she seeks to assert additional claims against new defendants based upon incidents that  
13 occurred after she was transferred back to Butte County Jail on February 23, 2021, for court  
14 proceedings. ECF Nos. 50, 52. Once the time for amending as a matter of course has passed,  
15 Rule 15(a)(2) permits an amended pleading “only with the opposing party's written consent or the  
16 court’s leave.” In considering whether to grant leave to amend, “[t]he court should freely give  
17 leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Under Rule 15(d), “the court may, on  
18 just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence,  
19 or event that happened after the date of the pleading to be supplemented.” Fed. R. Civ. P. 15(d).

20 The first amended complaint proceeds against defendants Moreland and Spencer on  
21 claims that they subjected plaintiff to unreasonable searches, unsanitary conditions, excessive  
22 force, and retaliation in 2016 and 2017. See ECF Nos. 23, 26. Although plaintiff alleges that the  
23 retaliation she is currently facing is because of filing the instant lawsuit, there is no indication that  
24 either defendant was responsible for the retaliation, and the alleged violations do not arise out of  
25 the same events at issue in this case. Accordingly, joinder of the claims or any additional

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26 <sup>1</sup> To the extent plaintiff’s motion can be construed to seek an injunction against Butte County Jail  
27 or Sheriff Honea, the jail is not a defendant, and although Sheriff Honea was named as a  
28 defendant, the claims against him were dismissed. ECF No. 31.

1 defendants would not be proper, see Fed. R. Civ. P. 18(a) (plaintiff may bring “as many claims as  
2 it has against an opposing party”); Fed. R. Civ. P. 20(a)(2) (plaintiff may only join defendants  
3 where claims against them arise “out of the same transaction, occurrence, or series of transactions  
4 or occurrences”), and the motions to supplement and amend should be denied. If plaintiff wishes  
5 to pursue these new claims, she may attempt to do so in a separate action after exhausting her  
6 administrative remedies.

7 Accordingly, IT IS HEREBY RECOMMENDED that:

8 1. Plaintiff’s motion for temporary restraining order, ECF No. 45, be DENIED.

9 2. Plaintiff’s motion to supplement the first amended complaint, ECF No. 50, be  
10 DENIED.

11 3. Plaintiff’s motion to amend the first amended complaint, ECF No. 52, be DENIED.

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

20 DATED: June 7, 2021

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22 ALLISON CLAIRE  
23 UNITED STATES MAGISTRATE JUDGE  
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