

1 and Acting U.S. Marshal Laysha Boyden, as well as Does 1 through 15. See ECF No. 1 at 1, 3-6.
2 The complaint, filed on March 17, 2021 (ECF No. 1) alleges multiple violations of plaintiff's
3 constitutional rights.

4 The undersigned has screened the complaint under 28 U.S.C. § 1915A and found that
5 none of the allegations state a claim upon which relief can be granted. ECF No. 10. Accordingly,
6 the complaint has not been served on any defendant. Plaintiff has been granted leave to amend.

7 Id.

8 B. The Motion for Preliminary Injunction

9 Plaintiff's preliminary injunction motion alleges that he is moved from unsanitary cell to
10 unsanitary cell twice a month. The cell moves occur each time that plaintiff is taken for a body
11 scan, which involves his exposure to newly arrived arrestees and thus to the COVID-19 virus.
12 See ECF No. 6 at 1-6. These allegations mirror those of Claim Five of the complaint, ECF No. 1
13 at 2, 9.

14 Plaintiff seeks an order enjoining the cell moves and generally directing defendants
15 collectively to respect his rights. He argues that current conditions, if allowed to continue, will
16 create a substantial risk of irreparable harm to him in the form of COVID-19 infection, possibly
17 resulting in complications and/or death. ECF No. 6 at 5-6. Plaintiff alleges that he is at high risk
18 because he is fifty years old, takes medication for certain lipid abnormalities, and has had two
19 major surgeries in the past four years. See ECF No. 6 at 4-5.

20 II. APPLICABLE LAW

21 "A preliminary injunction is an 'extraordinary and drastic remedy; it is never awarded as
22 of right.'" Munaf v. Geren, 553 U.S. 674, 689-90 (2008) (citations omitted). When evaluating the
23 merits of a motion for preliminary injunctive relief, the court considers several factors. Under
24 Winter v. Natural Resources Defense Council, 555 U.S. 7 (2008), the proper test requires a party
25 to demonstrate: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm
26 in the absence of an injunction; (3) the balance of equities tips in his favor, and (4) an injunction
27 is in the public interest. Winter, 555 U.S. at 20; see Stormans, Inc. v. Selecky, 586 F.3d 1109,
28 1127 (9th Cir. 2009) (citing Winter).

1 To the extent prior Ninth Circuit cases suggest a lesser standard by focusing on the mere
2 possibility of irreparable harm, such cases are “no longer controlling, or even viable.” Am.
3 Trucking Ass’ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009); see also
4 Sormans, Inc., 586 F.3d at 1127 (generally acknowledging same). The propriety of a request for
5 injunctive relief hinges on demonstrated and immediate threatened irreparable injury that must be
6 imminent in nature. Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674-75 (9th Cir.
7 1988); see also Associated General Contractors of California, Inc. v. Coalition for Economic
8 Equity, 950 F.2d 1401, 1410 (9th Cir. 1991) (citation omitted) (“A plaintiff must do more than
9 merely allege imminent harm . . . , he or she must demonstrate immediate threatened injury as a
10 prerequisite to preliminary injunctive relief.”).

11 A district court may not issue preliminary injunctive relief without primary jurisdiction
12 over the underlying cause of action. See Sires v. State of Washington, 314 F.2d 883, 884 (9th
13 Cir. 1963). Additionally, an injunction against individuals who are not parties to the action is
14 strongly disfavored. See, e.g., Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 112
15 (1969).

16 III. DISCUSSION

17 Plaintiff’s motion for a preliminary injunction must be denied for several reasons. First,
18 the complaint has been found not to state a claim for relief, including on the grounds which form
19 the basis for the motion. No defendant has been served. Without a viable complaint that states a
20 cognizable claim, there is no basis for this court to exercise the jurisdiction necessary to provide
21 injunctive relief. See Sires, 314 F.2d at 884.

22 Second, the undersigned specifically found on screening that plaintiff’s allegations do not,
23 even liberally construed, demonstrate that his Fourteenth Amendment rights are being violated by
24 the cell moves. The allegations of unsanitary conditions and increased COVID-19 exposure due
25 to cell moves are entirely conclusory. See ECF No. 1 (complaint) at 2, 9; ECF No. 6 (motion for
26 preliminary injunction) at 3-4, 5-6. Accordingly, plaintiff has not demonstrated a likelihood of
27 success on the merits of Claim Five of his complaint. Injunctive relief is therefore unavailable.
28 See Winter, 555 U.S. at 20.

1 Third, as the undersigned found on screening, plaintiff's allegations regarding risk of
2 harm are entirely speculative. The motion for preliminary injunctive relief does not provide
3 additional factual allegations that indicate either unconstitutionally unsafe conditions or a realistic
4 threat of imminent harm. Accordingly, plaintiff has failed to demonstrate the likelihood of
5 irreparable harm in the absence of an injunction. See Winter, 555 U.S. at 20; see also Fed. R.
6 Civ. P. 65(b)(A)(1) (movant must provide specific facts clearly showing immediate and
7 irreparable injury, loss or damage will result before adverse party can be heard in opposition).
8 The court has no illusions about the seriousness of COVID-19, but plaintiff has not presented
9 facts demonstrating that the cell moves and unspecified unsanitary conditions make it *likely* that
10 he will contract the virus and consequently suffer irreparable harm. Speculative injury does not
11 constitute irreparable injury sufficient to warrant issuance of preliminary injunction. Caribbean
12 Marine Servs. Co., 844 F.2d at 674.

13 CONCLUSION

14 For all these reasons, plaintiff's motion for a preliminary injunction should be denied.

15 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a
16 District Court Judge to this action.

17 IT IS FURTHER RECOMMENDED that plaintiff's motion for a preliminary injunction
18 (ECF No. 6) be DENIED.

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
21 after being served with these findings and recommendations, plaintiff may file written objections
22 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings
23 and Recommendations." Plaintiff is advised that failure to file objections within the specified
24 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
25 (9th Cir. 1991).

26 DATED: May 12, 2021

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28 ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE