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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

PAUL DAVID JOHNSON,  
Plaintiff,  
v.  
RON DAVIS, et al.,  
Defendants.

Case No. 21-CV-01693-LHK

**ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND IN PART;  
DENYING EX PARTE MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION**

Re: Dkt. Nos. 5, 6

Plaintiff, a California state prisoner proceeding *pro se*, filed a civil rights complaint under 42 U.S.C. § 1983. *See* Dkt. No. 1 (“Complaint”). Plaintiff also sought a temporary restraining order (“TRO”) and preliminary injunction. Dkt. No. 5 (“TRO Motion”).

For the reasons stated below, the Court dismisses the Complaint with leave to amend and denies the motion for a TRO and preliminary injunction.

**I. BACKGROUND**

Plaintiff is incarcerated at San Quentin State Prison (“San Quentin”). Compl. at 1. Plaintiff names the following defendants to this action (together, “Defendants”): Ron Davis, Supervisor of the Transportation Unit at San Quentin (“Supervisor Davis”), *id.* at 2; Ronald

1 Broomfield, the Warden of San Quentin (“Warden Broomfield”), *id.* at 3; Matt Verdier, Chief  
2 Executive Officer at San Quentin (“CEO Verdier”), *id.*; and T. Allen, Chief Deputy Warden of  
3 San Quentin (“CDW Allen”), *id.*

4 Plaintiff alleges that on May 26, 2020, inmates from Chino State Prison (“Chino”) were  
5 transferred to San Quentin. *Id.* at 2. He alleges that at least some of these inmates were “Covid-  
6 19 positive,” *id.*, and that their transfer exposed San Quentin inmates and staff to the Covid-19  
7 virus, *id.* at 3. Plaintiff alleges that San Quentin “top officials allowed” the transfer, *id.* at 2, and  
8 that the transfer was a “neglect[ful], unprofessional[] and atrocious” act “by the Supervisor Ron  
9 Davis,” *id.* at 3.

10 Plaintiff alleges that, as a result of the transfer of inmates from Chino, he tested positive  
11 for Covid-19 on June 29, 2020. *Id.* at 4. Plaintiff claims that, by “expos[ing]” him to “unpleasant  
12 circumstances,” the transfer violated his Eighth Amendment rights. *Id.* at 3.

13 As relief, plaintiff asks for the Court to investigate why the transfer was permitted. *Id.* at  
14 3, 4. He asks for the Court to “punish” the San Quentin staff members found “guilty” of the  
15 transfer. *Id.* at 4. Plaintiff asks the Court to order “some type of mental help [due] to the post-  
16 traumatic stress disorder” he has suffered from this experience. *Id.* Plaintiff also seeks  
17 compensation. *See id.*

18 Plaintiff filed the instant action on March 10, 2021. *See id.* On August 16, 2021, plaintiff  
19 moved for a TRO and preliminary injunction (“TRO Motion”). *See* TRO Mot. The TRO Motion  
20 asks the Court to order San Quentin officials to place plaintiff in single-cell housing in light of the  
21 ongoing risk of exposure to Covid-19, and to hire a specialist to “evaluate . . . plaintiff’s PSAs and  
22 other symptoms that ha[ve] been affecting his well-being and right knee.” *Id.* at 2.

23 **II. DISCUSSION**

24 **A. Legal Standard**

25 As to the Complaint, a federal court must conduct a preliminary screening in any case in  
26 which a prisoner seeks redress from a governmental entity or officer or employee of a  
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1 governmental entity. *See* 28 U.S.C. § 1915A(a). The court must identify any cognizable claims  
 2 and dismiss claims that are frivolous, malicious, fail to state a claim upon which relief may be  
 3 granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C.  
 4 § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See Balistreri v.*  
 5 *Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C.  
 6 § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the laws or  
 7 Constitution of the United States was violated, and (2) that the alleged violation was committed by  
 8 a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

9 As to the TRO Motion, TROs and preliminary injunctions require satisfaction of “[t]he  
 10 same legal standard.” *Henry Schein, Inc. v. Cook*, 191 F. Supp. 3d 1072, 1076 (N.D. Cal. 2016)  
 11 (citing *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)).  
 12 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the  
 13 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
 14 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat.*  
 15 *Res. Def. Council*, 555 U.S. 7, 20 (2008). Such remedies are extraordinary, and not granted as of  
 16 right. *See id.* “The [United States] Supreme Court has repeatedly cautioned that, absent a threat  
 17 of immediate and irreparable harm, the federal courts should not enjoin a state to conduct its  
 18 business in a particular way.” *Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1042 (9th Cir. 1999)  
 19 (citing cases). “The Ninth Circuit weighs these factors on a sliding scale, such that where there  
 20 are only ‘serious questions going to the merits’—that is, less than a ‘likelihood of success on the  
 21 merits’—a preliminary injunction may still issue so long as ‘the balance of hardships  
 22 tips sharply in the plaintiff’s favor’ and the other two factors are satisfied.” *Short v. Brown*, 893  
 23 F.3d 671, 675 (9th Cir. 2018) (emphasis in original) (quoting *Shell Offshore, Inc. v. Greenpeace,*  
 24 *Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013)). Even where the balance tips sharply in a plaintiff’s  
 25 favor, however, the plaintiff must still make the threshold showing of likely success on the merits  
 26 or a serious legal question. *See Leiva-Perez v. Holder*, 640 F.3d 962, 965 (9th Cir. 2011) (“[E]ven  
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1 certainty of irreparable harm has never *entitled* one to a stay.”) (emphasis in original). The party  
2 seeking the injunction bears the burden of proving each element. *Klein v. City of San Clemente*,  
3 584 F.3d 1196, 1201 (9th Cir. 2009). The issuance of a preliminary injunction is at the discretion  
4 of the district court. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

5 The Prisoner Litigation Reform Act of 1995 (“PLRA”) restricts the power of a court to  
6 grant prospective relief in any action involving prison conditions. *See* 18 U.S.C. § 3626(a).  
7 Section 3626(a)(2) permits a court to enter a temporary restraining order or preliminary injunction  
8 “to the extent otherwise authorized by law” but requires that such an order “be narrowly drawn,  
9 extend no further than necessary to correct the harm the court finds requires preliminary relief, and  
10 be the least intrusive means necessary to correct that harm.” *See* 18 U.S.C. § 3626(a)(2). The  
11 court must give “substantial weight to any adverse impact on public safety or the operation of a  
12 criminal justice system caused by the preliminary relief.” *Id.*

13 **B. The Complaint is dismissed with leave to amend in part.**

14 Plaintiff seeks to hold Defendants liable for deliberate indifference to plaintiff’s serious  
15 medical need. *See generally*, Compl. However, plaintiff fails to plead that Supervisor Davis had  
16 the required mental state, and fails to connect Warden Broomfield, CDW Allen, or CEO Verdier  
17 to any adverse action. In addition, plaintiff requests relief which this Court cannot grant.

18 **1. Supervisor Davis**

19 Plaintiff repeatedly alleges that Supervisor Davis’s actions stem from “neglect” and  
20 “negligence.” *Id.* at 3.

21 A claim of “negligence is insufficient to establish a constitutional deprivation under the  
22 Eighth Amendment.” *Toguchi v. Chung*, 391 F.3d 1051, 1060-61 (9th Cir. 2004). Neither  
23 negligence nor gross negligence is actionable under Section 1983 in the prison context. *See*  
24 *Farmer v. Brennan*, 511 U.S. 825, 835-36 & n.4 (1994) (explaining that deliberate indifference  
25 requires “a state of mind more blameworthy than negligence”). Rather, to state a claim for  
26 deliberate indifference to serious medical needs, plaintiff must demonstrate “two elements: the  
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1 seriousness of the prisoner’s medical need and the nature of the defendant’s response to that  
2 need.” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled in part on other*  
3 *grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A prison  
4 official is deliberately indifferent if he knows that a prisoner faces a substantial risk of serious  
5 harm and disregards that risk by failing to take reasonable steps to abate it. *Farmer*, 511 U.S. at  
6 837-38 (reasoning that an official cannot be said to have inflicted a punishment if the official’s  
7 actions were unaccompanied by knowledge). “If a [prison official] should have been aware of the  
8 risk, but was not, then the [official] has not violated the Eighth Amendment, no matter how severe  
9 the risk.” *Gibson v. Cnty. of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002).

10 Because plaintiff specifically describes Supervisor Davis’s mental state as one of  
11 “negligence,” and does not allege that Supervisor Davis knew that the prisoners arriving from  
12 Chino carried Covid-19, plaintiff has failed to allege that Supervisor Davis had the required  
13 mental state to support an Eighth Amendment claim. *See generally*, Compl. Moreover, although  
14 plaintiff alleges that Supervisor Davis “allowed” the transfer of prisoners from Chino, plaintiff  
15 does not allege that Supervisor Davis had the authority to decline this transfer, to order the transfer  
16 be carried out differently, or to manage San Quentin’s actions post-transfer. *See generally, id.*  
17 Without such details, plaintiff has failed to state an Eighth Amendment claim against Supervisor  
18 Davis.

19 **2. Warden Broomfield, CDW Allen, and CEO Verdier**

20 Plaintiff’s allegations against Warden Broomfield, CDW Allen, and CEO Verdier are even  
21 more deficient. Plaintiff specifically identifies Supervisor Davis as the officer whose “act . . . le[d]  
22 to” Covid-19 entering San Quentin, *see id.* at 3, without describing any actions carried out by the  
23 other three Defendants, *see generally, id.*

24 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 only if the  
25 plaintiff can show that the defendant’s actions both actually and proximately caused the  
26 deprivation of a federally protected right. *Lemire v. Cal. Dep’t. of Corr. & Rehab.*, 726 F.3d  
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1 1062, 1085 (9th Cir. 2013) (explaining that a supervisor may only be held liable “if he was  
2 personally involved in the constitutional deprivation or a sufficient causal connection exists  
3 between his unlawful conduct and the constitutional violation”); *Leer v. Murphy*, 844 F.2d 628,  
4 634 (9th Cir. 1988) (affirming summary judgment where inmates did not establish “the requisite  
5 causal connection between each individual prison official’s actions and the eighth amendment  
6 violation,” because this is a “necessary element of their claim” for deliberate indifference). “A  
7 person deprives another ‘of a constitutional right, within the meaning of section 1983, if he does  
8 an affirmative act, participates in another’s affirmative act[,], or omits to perform an act which he  
9 is legally required to do[,], that *causes* the deprivation of which the plaintiff complains.” *See*  
10 *Leer*, 844 F.2d at 633 (emphasis in original, citation omitted); *see, e.g., Robins v. Meecham*, 60  
11 F.3d 1436, 1442 (9th Cir. 1995) (prison official’s failure to intervene to prevent 8th Amendment  
12 violation may be basis for liability).

13 Here, plaintiff has failed to identify any act performed by Warden Broomfield, CDW  
14 Allen, or CEO Verdier, or any act which these Defendants fails to perform. Plaintiff thus has not  
15 identified any basis on which these Defendants might be held liable for an Eighth Amendment  
16 violation.

17 **3. Plaintiff will be permitted to amend the Complaint as to his damages claim.**

18 The Ninth Circuit instructs district courts to *sua sponte* grant leave to amend “unless [the  
19 district court] determines that the pleading could not possibly be cured by the allegation of other  
20 facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (citing cases).

21 Here, plaintiff may be able to cure his allegations against Supervisor Davis if plaintiff is  
22 able to identify facts suggesting that Supervisor Davis had the mental state required to support an  
23 Eighth Amendment claim. Likewise, plaintiff may be able to cure his allegations against Warden  
24 Broomfield, CDW Allen, and CEO Verdier. To do so, plaintiff must identify some action, or  
25 failure to act, on the part of each defendant which contributed to plaintiff’s exposure to Covid-19.

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1           Because plaintiff may be able to cure his allegations against defendants, plaintiff will be  
2 given leave to amend his Eighth Amendment claim for damages against Supervisor Davis,  
3 Warden Broomfield, CDW Allen, and CEO Verdier.

4           **4. Injunctive Relief Sought in the Complaint**

5           As noted above, plaintiff asks the Court to conduct an investigation on his behalf and  
6 punish wrongdoers. *See* Compl. at 3-4. Plaintiff is advised that courts do not investigate claims  
7 on behalf of litigants. Rather, plaintiff must investigate his own claim. Moreover, the Court has  
8 no power to punish San Quentin officials. Rather, the Court may hold those officials liable for  
9 damages if plaintiff proves his case.

10           Plaintiff’s request for “some type of mental help” is similarly beyond the Court’s authority.  
11 Instead, if plaintiff believes he needs mental health care, he should contact San Quentin’s medical  
12 staff for assistance. If plaintiff’s request for mental health care is denied, this could constitute a  
13 separate Eighth Amendment claim, which would need to proceed in a different action. *See*  
14 *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982) (mental health care requirements analyzed  
15 as part of general health care requirements).

16           Because plaintiff seeks injunctive relief which is beyond this Court’s power, amendment  
17 would be futile. Plaintiff’s request for injunctive relief is dismissed without leave to amend.

18           **C. Plaintiff is not entitled to a TRO or a preliminary injunction.**

19           As noted above, the TRO Motion asks the Court to order San Quentin officials to place  
20 plaintiff in single-cell housing in light of the ongoing risk of exposure to Covid-19, and to hire a  
21 specialist to “evaluate . . . plaintiff’s PSAs and other symptoms that ha[ve] been affecting his well-  
22 being and right knee.” TRO Mot. at 2.

23           Plaintiff’s TRO Motion is denied because plaintiff fails to meet the procedural  
24 requirements to be granted a TRO *ex parte*. In addition, plaintiff does not fulfill all of the  
25 substantive requirements to be granted an injunction. The Court will discuss each defect in turn.<sup>1</sup>

26 \_\_\_\_\_  
27 <sup>1</sup> Even if plaintiff had fulfilled the procedural and substantive requirements to obtain a TRO, the

1           **1. Procedural Requirements**

2           Federal Rule of Civil Procedure 65 sets forth the procedure for issuance of a preliminary  
3 injunction or TRO. Prior to granting a preliminary injunction, notice to the adverse party is  
4 required. *See* Fed. R. Civ. P. 65(a)(1). Therefore, a motion for preliminary injunction cannot be  
5 decided until the parties to the action are served. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir.  
6 1983) (explaining that an injunction may “affect only those persons over which [the court] has  
7 power”). However, under a specific procedure a court may grant injunctive relief *ex parte*:

8                     The court may issue a temporary restraining order without written or  
9 oral notice to the adverse party or its attorney *only if*:  
10                    **(A)** specific facts in an affidavit or a verified complaint clearly show  
11                    that immediate and irreparable injury, loss, or damage will result to  
                      the movant before the adverse party can be heard in opposition; *and*  
                      **(B)** the movant’s attorney certifies in writing any efforts made to give  
                      notice *and* the reasons why it should not be required.

12           Fed. R. Civ. P. 65(b)(1) (“Rule 65(b)(1)”) (emphases added).

13           Plaintiff fails to fulfill the first requirement to obtain *ex parte* injunctive relief. The TRO  
14 Motion does not argue, much less provide specific facts to support the argument, that plaintiff will  
15 be irreparably harmed if Defendants are permitted to respond to the TRO Motion. Plaintiff does  
16 not explain why relief cannot wait until Defendants are allowed to be heard. Rule 65(b)(1)  
17 specifically requires that such an explanation appear “in an affidavit or verified complaint.” Fed.  
18 R. Civ. P. 65(b)(1)(A). Because plaintiff does not explain in the Complaint or in any affidavit  
19 why Defendants should not be given time to respond to the TRO Motion, plaintiff does not fulfill  
20 the requirements of Rule 65(b)(1).

21           Moreover, plaintiff does not put forth “specific facts” that “clearly show” immediate injury

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23           \_\_\_\_\_ Court would have to deny plaintiff’s request for “evaluat[ion] of his “PSAs and . . . right knee.”  
24 TRO Mot. at 2. It is well-settled that a plaintiff is not entitled to an injunction based on claims not  
25 pled in the complaint. *See Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631,  
26 636 (9th Cir. 2015) (“[T]here must be a relationship between the injury claimed in the motion for  
27 injunctive relief and the conduct asserted in the underlying complaint. This requires a sufficient  
nexus between the claims raised in a motion for injunctive relief and the claims set forth in the  
underlying complaint itself.”). Here, the Complaint does not mention plaintiff’s “PSAs” or right  
knee pain. *See generally*, Compl. To the extent plaintiff seeks and is denied medical care for  
these independent conditions, such a claim must be pursued in a separate suit.

1 will result in the absence of injunctive relief. *Id.* This showing is the “single most important  
 2 prerequisite for the issuance of a [TRO].” *Universal Semiconductor, Inc. v. Tuoi Vo*, No. 5:16-  
 3 CV-04778-EJD, 2016 WL 9211685, at \*2 (N.D. Cal. Nov. 29, 2016). Plaintiff must “demonstrate  
 4 that irreparable injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22 (emphasis  
 5 original). A TRO ordered on anything less is “inconsistent” with the principle that “injunctive  
 6 relief [is] an extraordinary remedy.” *Id.* Plaintiff must do more than plausibly *allege* imminent  
 7 harm; he “must *demonstrate* immediate threatened injury as a prerequisite to preliminary  
 8 injunctive relief.” *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir.  
 9 1988) (emphasis in original).

10 Here, plaintiff does not explain why he is likely to be injured in the future, in the absence  
 11 of a single-cell order from this Court. Indeed, plaintiff appears already to have suffered the injury  
 12 that he fears. The Complaint reveals that plaintiff contracted Covid-19 more than one year ago.  
 13 Compl. at 4. In his request for injunctive relief, plaintiff does not explain why it is *likely*, as  
 14 opposed to possible, that he will contract Covid-19 for a second time, and why it is *likely*, as  
 15 opposed to possible, that a second infection would injure him in a manner that exceeds the injury  
 16 that he has already suffered. *See generally*, TRO Motion. Courts have declined to grant  
 17 injunctive relief where a plaintiff has already contracted Covid-19, and fails to establish that he is  
 18 likely to contract it a second time or that the hypothetical second infection will cause additional  
 19 injury. *See, e.g., Alcantara v. Archambeault*, 462 F. Supp. 3d 1073, 1079 (S.D. Cal. 2020) (where  
 20 plaintiffs sought release, concluding that inmates who “have already contracted the coronavirus  
 21 and recovered” had not shown a likelihood of immediate and irreparable injury); *Cox v. Daram*,  
 22 No. 2:20-CV-1295-KJM-DBP, 2021 WL 3662392, at \*8 (E.D. Cal. Aug. 18, 2021) (citing CDC  
 23 guidance stating that cases of reinfection are rare); *cf. Gavilanes-Curiel v. Archambeault*, No. 21-  
 24 CV-1471-CAB-WVG, 2021 WL 4895222, at \*1 (S.D. Cal. Sept. 21, 2021) (“Courts are  
 25 consistently refusing to grant release from custody to inmates or detainees who have been  
 26 vaccinated.”) (citing cases). While the Court is not unsympathetic to plaintiff’s concerns,  
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1 injunctive relief aims to prevent future harm, not to remedy the harm that has already been  
2 suffered.

3 Plaintiff also does not fulfill the requirement to explain what efforts he has taken to  
4 provide notice. Rule 65(b)(1)(B). Explaining the efforts plaintiff has taken to provide notice is a  
5 required element, and the Court may grant *ex parte* relief “only if” this element is satisfied. *Id.*

6 Because plaintiff does not fulfill the procedural requirements of Rule 65(b)(1), the Court  
7 **DENIES** the TRO Motion.

8 **2. Substantive Requirements**

9 To obtain injunctive relief, plaintiff must either show that he is likely to succeed on the  
10 merits or raise a serious legal question; that he is likely to suffer irreparable harm absent  
11 preliminary relief; that the balance of equities tips in his favor; and that an injunction is in the  
12 public interest. *See Winter*, 555 U.S. at 20 (stating requirements).

13 As noted above, the party seeking the injunction bears the burden of proving each  
14 element. *See Klein*, 584 F.3d at 1201 (explaining this burden). For the reasons discussed above,  
15 plaintiff fails to identify any defendant against whom his claim may proceed, and thus has not  
16 shown that he is likely to succeed on the merits. Because plaintiff has not shown he is likely to  
17 succeed on the merits, he has failed to prove each element required to obtain injunctive relief.

18 Because plaintiff fails to satisfy the procedural and substantive requirements for injunctive  
19 relief, the TRO Motion is **DENIED**.

20 **III. CONCLUSION**

21 1. Plaintiff’s Complaint is **DISMISSED** with leave to amend in part. Plaintiff may  
22 amend only his Eighth Amendment claim for damages against Supervisor Davis, Warden  
23 Broomfield, CDW Allen, and CEO Verdier. Plaintiff may not amend his request for injunctive  
24 relief.

25 2. If plaintiff believes he can state a cognizable claim for damages, he shall file an  
26 **AMENDED COMPLAINT** within **thirty-five days** from the date this order is filed. The amended  
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1 complaint must include the caption and civil case number used in this order (CV 21-1693-LHK  
2 (PR)) and the words AMENDED COMPLAINT on the first page. If plaintiff files an amended  
3 complaint, he must allege, in good faith, facts - not merely conclusions of law - that demonstrate  
4 that he is entitled to relief under the applicable federal statutes. **Failure to file an amended**  
5 **complaint within thirty-five days and in accordance with this order will result in a finding**  
6 **that further leave to amend would be futile, and this action will be dismissed.**

7 3. Plaintiff is advised that an amended complaint supersedes the original complaint.  
8 “[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged in  
9 the amended complaint.” *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).  
10 Defendants not named in an amended complaint are no longer defendants. *See Ferdik v. Bonzelet*,  
11 963 F.2d 1258, 1262 (9th Cir. 1992) (where plaintiff had filed amended complaint, declining to  
12 look to the first complaint to establish the identities of unnamed defendants).

13 4. It is plaintiff’s responsibility to prosecute this case. Plaintiff must keep the Court  
14 informed of any change of address by filing a separate paper with the Clerk headed “Notice of  
15 Change of Address,” and must comply with the Court’s orders in a timely fashion. Failure to do  
16 so **will** result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of  
17 Civil Procedure 41(b).

18 5. Plaintiff’s TRO Motion is DENIED. Dkt. No. 5.

19 6. Plaintiff requested a copy of the docket. Dkt. No. 6. The record reveals that the  
20 Clerk sent plaintiff a copy of the docket on October 19, 2021. *See* Dkt. No. 7 (noting Clerk’s  
21 action). Because plaintiff’s request has already been granted, the Clerk shall terminate the motion  
22 filed at Docket No. 6.

23 This order resolves Docket Nos. 5 and 6.

24 **IT IS SO ORDERED.**

25 DATED: November 19, 2021

26   
27 LUCY H. KOH  
28 UNITED STATES DISTRICT JUDGE