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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 ESTER BURNETT,  
12 CDCR #V-35245,

13 Plaintiff,

14 vs.

15 DUGAN; KINJI L. HAWTHORNE;  
16 BROWN; FRAZE; D. KHATRI;  
VICTOR ALMAGER; BARRERAS,

17 Defendants.

Civil No. 08-1324 L (WVG)

**ORDER DENYING PLAINTIFF'S  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

[Doc No. 98]

18  
19 **I. PROCEDURAL HISTORY**

20 Currently before the Court is Plaintiff's Motion for a Temporary Restraining Order and  
21 Preliminary Injunctive Relief pursuant to FED.R.CIV.P. 65 [Doc No. 98].

22 Ester Burnett ("Plaintiff"), is a prisoner proceeding *in pro se* and *in forma pauperis*  
23 pursuant to 42 U.S.C. § 1983. Among the allegations in his Complaint, Plaintiff claims that  
24 prison officials at California State Prison, Centinela ("CEN") have violated his Eighth  
25 Amendment rights by failing to provide him with adequate medical care and failing to  
26 accommodate his disability. The Court sua sponte screened Plaintiff's Complaint and initially  
27 dismissed it for failing to state a claim upon which § 1983 relief could be granted. (*See* Sept.  
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08cv1324 L (WVG)

1 29, 2008 Order at 6-7.) Plaintiff filed his First Amended Complaint (“FAC”) on November 24,  
2 2008 [Doc. No. 11]. The Court once again screened Plaintiff’s FAC and found that the  
3 allegations in Plaintiff’s FAC survived the sua sponte screening process required by 28 U.S.C.  
4 §§ 1915(e)(2) and 1915A(b). (See Dec. 10, 2008 Order at 2.) The Court further found that  
5 Plaintiff was entitled to U.S. Marshal service on his behalf. (*Id.*)

6 On March 19, 2009, Plaintiff filed a Motion for Temporary Restraining Order and  
7 Preliminary Injunction [Doc. No. 25]. The Court deemed Plaintiff’s motion as a motion for  
8 preliminary injunction and issued a briefing schedule. After reviewing all documents submitted  
9 by both parties, the Court found that Plaintiff was able to show that he was exposed to  
10 irreparable harm and ordered Defendants to comply with medical directions issued by Samuel  
11 Ko, M.D. on January 21, 2009. (See May 6, 2009 Order at 8.) The Court later granted  
12 Defendants’ Motion to Dissolve the Preliminary Injunction. (See Oct. 9, 2009 Order at 6.)

13 Plaintiff was later transferred to California State Prison, Sacramento. (See Notice of  
14 Change of Address, Doc. No. 37). On August 5, 2009, Plaintiff filed another request for  
15 “Emergency Order Granting Temporary Restraining Order” to which Defendants filed a  
16 response on August 31, 2009. The Court denied this Motion on September 8, 2009.

17 Plaintiff was then transferred to Pleasant Valley State Prison on September 28, 2009.  
18 (See Pl.’s Decl. at 2.) He filed another “Motion for Emergency Preliminary Injunction” [Doc.  
19 No. 91] in which he sought to enjoin prison officials at Pleasant Valley State Prison. The Court  
20 denied this Motion on March 18, 2010 [Doc. No. 93]. Plaintiff has, once again filed, a “Motion  
21 for a TRO and Preliminary Injunction.” [Doc. No. 98]. Plaintiff is currently incarcerated at High  
22 Desert State Prison [Doc. No. 99].

## 23 **II. FACTUAL ALLEGATIONS**

24 In his most recent motion, Plaintiff claims that he has been transferred to various prisons  
25 around California and all have failed to comply with medical orders issued by his Neurosurgeon,  
26 Dr. Calvin. While Plaintiff appeared to have been temporarily housed at the Richard J. Donovan  
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1 Correctional Facility (“Donovan”) for a period of four days, he currently is housed at High  
2 Desert State Prison.

### 3 **III. LEGAL STANDARD**

4 In order to demonstrate the need for preliminary injunctive relief a party must show “that  
5 he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence  
6 of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the  
7 public interest.” *Stormans, Inc. v. Selecky*, 572 F.3d 960, 978 (9th Cir. 2009) (quoting *Winter*  
8 *v. NRDC, Inc.*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 365, 374 (2008)).

9 However, in order for this Court to consider Plaintiff’s request for a preliminary  
10 injunction it must first consider whether the Court has personal jurisdiction over the parties. “A  
11 federal court may issue an injunction if it is has personal jurisdiction over the parties and subject  
12 matter jurisdiction over the claim; it may not attempt to determine the rights of persons not  
13 before the court.” *Zepeda v. United States Immigration Service*, 753 F.2d 719, 727 (9th Cir.  
14 1985). Plaintiff is seeking injunctive relief against parties who are not named in this action and  
15 not before this Court. The only named parties are individuals who are employed at Centinela  
16 State Prison. Plaintiff is seeking relief against individuals at a number of other prisons around  
17 the State of California but none of them are Defendants in this matter. While Donovan is located  
18 within the boundaries of this Court’s jurisdiction, the Warden for Donovan is not a party to this  
19 action.

20 Accordingly, because the Court has no personal jurisdiction over the parties Plaintiff  
21 seeks to enjoin, the Court hereby **DENIES**, without prejudice, Plaintiff’s Motion for  
22 Preliminary Injunction. *See Grigsby v. CMI Corp.*, 765 F.2d 1369, 1372, n.5 (9th Cir. 1985).

23 The Court also cannot issue a Temporary Restraining Order (“TRO”) as to the claims  
24 Plaintiff brings in his motion. The standard for issuing a TRO is similar to the standard for  
25 issuing a preliminary injunction. *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*,  
26 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). A party must show: “1) a strong likelihood of  
27 success on the merits, 2) the possibility of irreparable injury to plaintiff if preliminary relief is  
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1 not granted, 3) a balance of hardships favoring the plaintiff, and 4) advancement of the public  
2 interest (in certain cases).” *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1120 (9th Cir.  
3 2005). Here, Plaintiff cannot demonstrate a likelihood of success on the merits. The claims in  
4 his motion have all arisen after the filing of this action and are against new Defendants. Thus,  
5 Plaintiff could not have exhausted these claims prior to bringing this action. The plain language  
6 of 42 U.S.C. § 1997e(a) provides that no § 1983 action “shall be *brought* . . . until such  
7 administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a) (emphasis added).  
8 The Ninth Circuit’s decision in *McKinney v. Carey*, 311 F.3d 1198 (9th Cir. 2002) holds that  
9 prisoners who are incarcerated at the time they file a civil action which challenges the conditions  
10 of their confinement are required to exhaust “all administrative remedies as are available” as a  
11 mandatory precondition to suit. *See McKinney*, 311 F.3d at 1198. Thus, the Court DENIES  
12 Plaintiff’s request for a TRO.

13 **IV. CONCLUSION AND ORDER**

14 Based on the foregoing, **IT IS HEREBY ORDERED** that:

15 Plaintiff’s Motion for a TRO and Preliminary Injunction is **DENIED** without prejudice.  
16 [Doc. No. 98].

17 **IT IS SO ORDERED.**

18 DATED: July 6, 2010

19   
20 M. James Lorenz  
United States District Court Judge

21 COPY TO:

22 HON. WILLIAM V. GALLO  
23 UNITED STATES MAGISTRATE JUDGE

24 ALL PARTIES/COUNSEL  
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