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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KEITH WAYNE SEKERKE,
Plaintiff,
v.
SHERIFF DEPUTY GONZALEZ,
Defendant.

Case No.: 15-CV-573-JLS(WVG)

**FINDINGS AND
RECOMMENDATION RE:
PLAINTIFF’S MOTION FOR
INJUNCTION FOR PRISON
TRANSFER AND OTHER ORDERS**

[Doc. No. 76.]

Plaintiff Keith Wayne Sekerke appears *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. By the instant motion, Plaintiff seeks an injunction, asking the Court to order the California Department of Corrections and Rehabilitation (“CDCR”) to transfer him to a different prison and to order prison guards to cease assaulting, and retaliating against, him. (Doc. No. 76.) This Court respectfully RECOMMENDS that Plaintiff’s motion for injunctive relief be DENIED.

This action proceeds on Plaintiff’s Eighth Amendment claim for excessive force when Plaintiff was a pre-trial detainee on July 9, 2014. He alleges the Defendant, San Diego County Sheriff Deputy Gonzalez, used excessive force against him in a courtroom of the San Diego Superior Court. He claims Defendant strangled him and assaulted him in various other ways while Plaintiff was restrained in chains.

1 On April 10, 2017, Plaintiff filed the instant motion, seeking an injunction asking
2 the Court to order the CDCR to transfer him to another prison and to order the guards at
3 the Kern Valley State Prison to cease assaulting him and retaliating against him for
4 attempting to litigate this lawsuit.

5 The purpose of a temporary restraining order or a preliminary injunction is to
6 preserve the status quo if the balance of equities so heavily favors the moving party that
7 justice requires the court to intervene to secure the positions until the merits of the action
8 are ultimately determined. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). “A
9 plaintiff seeking a preliminary injunction [or temporary restraining order] must establish
10 that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
11 absence of preliminary relief, that the balance of equities tips in his favor, and that an
12 injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,
13 20 (2008). “[A] preliminary injunction is an extraordinary and drastic remedy, one that
14 should not be granted unless the movant, by a clear showing, carries the burden of
15 persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quotations and citations
16 omitted) (emphasis in original).

17 Federal courts are courts of limited jurisdiction and in considering a request for
18 preliminary injunctive relief, the Court is bound by the requirement that as a preliminary
19 matter, it have before it an actual case or controversy. *City of Los Angeles v. Lyons*, 461
20 U.S. 95, 102 (1983); *Valley Forge Christian Coll. v. Ams. United for Separation of Church
21 and State, Inc.*, 454 U.S. 464, 471 (1982). If the Court does not have an actual case or
22 controversy before it, it has no power to hear the matter in question. *Id.* Requests for
23 prospective relief are further limited by 18 U.S.C. § 3626(a)(1)(A) of the Prison Litigation
24 Reform Act, which requires that the Court find the “relief [sought] is narrowly drawn,
25 extends no further than necessary to correct the violation of the Federal right, and is the
26 least intrusive means necessary to correct the violation of the Federal right.”

27 Here, Plaintiff requests a transfer to a different prison because his access to the law
28 library at Kern Valley State Prison is allegedly being impeded and the guards have

1 assaulted him for litigating this case. However, the equitable relief Plaintiff requests is not
2 sufficiently related to his underlying legal claims to satisfy the jurisdictional requirements
3 that apply to federal courts. Plaintiff's underlying claims are against San Diego County
4 Deputy Sheriff Gonzalez and occurred in a courtroom of the San Diego Superior Court.
5 His claims do not involve Kern Valley Prison or any CDCR prison guard. Any alleged
6 actions taken against him several years after Defendant Gonzalez allegedly assaulted him
7 and in a location hundreds of miles away from San Diego are separate and distinct from
8 the underlying facts of this case. Thus, ordering Plaintiff transferred to a different prison
9 would not address or redress any alleged injury in the instant case.

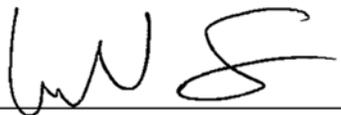
10 Based on the foregoing, Plaintiff is not entitled to any relief that is not narrowly
11 drawn to correct the violation of his rights at issue in this action. Any alleged guard assaults
12 or retaliation against Plaintiff at Kern Valley State Prison in Delano, California are
13 factually disconnected from, and unrelated to, the core facts of this case and are properly
14 the subject of a separate section 1983 action if Plaintiff chooses to pursue that route. The
15 constitutional and statutory requirements applicable to equitable relief preclude Plaintiff
16 from entitlement to generalized relief such as an order directing that prison officials transfer
17 him to a different prison. The Court's jurisdiction is limited to the parties before it in this
18 action and to Plaintiff's claim for damages arising from an incident of alleged excessive
19 force on July 9, 2014. *See, e.g., Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-
20 04 (1998) (“[The] triad of injury in fact, causation, and redressability constitutes the core
21 of Article III's case-or-controversy requirement, and the party invoking federal jurisdiction
22 bears the burden of establishing its existence.”) (citation omitted); *Am. Civil Liberties*
23 *Union of Nev. v. Mastro*, 670 F.3d 1046, 1061-62 (9th Cir. 2012) (“[F]ederal courts may
24 adjudicate only actual, ongoing cases or controversies.”) (citation and internal quotation
25 marks omitted).

26 Accordingly, it is **HEREBY RECOMMENDED** that Plaintiff's motion for
27 injunctive relief be **DENIED**.

1 This Findings and Recommendation will be submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **No later**
3 **than May 20, 2017**, the parties may file written objections with the Court. The document
4 should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.”
5 The parties are advised that failure to file objections within the specified time may result
6 in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir.
7 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

8 IT IS SO ORDERED.

9 DATED: April 17, 2017

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13 Hon. William V. Gallo
14 United States Magistrate Judge
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