

1 subject to yearly reevaluation. (*Id.* at 6.) For the reasons herein, the Court **DENIES**
2 Plaintiff’s motion for a preliminary injunction.

3 **I. LEGAL STANDARD**

4 A preliminary injunction is an extraordinary relief and drastic remedy and “one
5 that should not be granted unless the movant, by a clear showing, carries the burden
6 of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). An injunction
7 may be granted only where the movant shows that “he is likely to succeed on the
8 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
9 that the balance of equities tips in his favor, and that an injunction is in the public
10 interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Am.*
11 *Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009).
12 The movant has the burden of proof on each element of the test. *Env'tl. Council of*
13 *Sacramento v. Slater*, 184 F. Supp. 2d 1016, 1027 (E.D. Cal. 2000).

14 The Prison Litigation Reform Act (“PLRA”) imposes additional requirements
15 on prisoner litigants who seek preliminary injunctive relief against prison officials.
16 “Preliminary injunctive relief must be narrowly drawn, extend no further than
17 necessary to correct the harm the court finds requires preliminary relief, and be the
18 least intrusive means necessary to correct that harm.” 18 U.S.C. §3626(a)(2). As the
19 Ninth Circuit has previously observed, the PLRA places significant limits upon a
20 court’s power to grant preliminary injunctive relief to inmates, and “operates
21 simultaneously to restrict the equity jurisdiction of federal courts and to protect the
22 bargaining power of prison administrators—no longer may courts grant or approve
23 relief that binds prison administrators to do more than the constitutional minimum.”
24 *Gilmore v. People of the State of California*, 220 F.3d 987, 998-99 (9th Cir. 2000).

25 **II. DISCUSSION**

26 **A. The Request for Injunctive Relief is Not Moot**

27 First, the Court addresses Defendants’ argument that Plaintiff’s request for
28 injunctive relief is moot. Defendants provide evidence showing that Plaintiff was

1 provided a lower bunk assignment on December 31, 2015. (ECF No. 38 at 6.) They
2 also provide evidence showing that Plaintiff “has a permanent lower bunk chrono
3 with an expiration date of December 31, 9999.” (*Id.* at 5 (citing Decl. of T. Johnson
4 ¶¶3–4, Exs. A–B).) Defendants do not provide evidence showing that the permanent
5 lower bunk chrono is not subject to reevaluation, which is the basis of Plaintiff’s
6 request for injunctive relief. (ECF No. 30 at 6.) The absence of this evidence
7 prevents the Court from concluding that Plaintiff’s motion is in fact moot. *Cf.*
8 *Williams v. Chau*, No. 3:17-cv-00517-CAB-KSC, 2018 WL 558987, at *7 (S.D. Cal.
9 Jan. 24, 2018) (preliminary injunction request for permanent lower bunk chrono
10 without reevaluation was moot because plaintiff had received accommodation with
11 expiration date of 12/31/9999 *not subject to reevaluation*). Because Plaintiff’s
12 request is not moot, the Court proceeds to assess whether Plaintiff has shown that he
13 is entitled to preliminary injunctive relief.

14 **B. Plaintiff Has Failed to Show Irreparable Harm Necessary for**
15 **Issuance of a Preliminary Injunction**

16 The Court finds that the issue of whether Plaintiff is entitled to a preliminary
17 injunction at this stage of the proceedings begins and ends with his failure to show
18 irreparable harm.

19 Irreparable harm has been described as “[p]erhaps the single most important
20 prerequisite for the issuance of a preliminary injunction.” *See* 11A Wright & Miller,
21 FED. PRAC. & PROC. §2948.1 (3d ed.). When a plaintiff fails to demonstrate a
22 likelihood of irreparable harm without preliminary relief, the court need not address
23 the remaining elements of the preliminary injunction standard. *See Center for Food*
24 *Safety v. Vilsack*, 636 F.3d 1166, 1174 (9th Cir. 2011). Because the conduct at issue
25 in this case concerns alleged past violations of the law by government actors, Plaintiff
26 is required to establish the threat of future or repeated injury that is both “real and
27 immediate,” not merely “conjectural” or “hypothetical.” *City of Los Angeles v.*
28 *Lyons*, 461 U.S. 95, 102 (1983). The Plaintiff must show “that a credible threat exists

1 that [he] will again be subject to the specific injury for which [he] seek[s] injunctive
2 or declaratory relief.” *Sample v. Johnson*, 771 F.2d 1335, 1340 (9th Cir. 1985). The
3 Ninth Circuit has repeatedly admonished that “[s]peculative injury does not
4 constitute irreparable injury sufficient to warrant granting a preliminary injunction.”
5 *Carribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988); *Goldie’s*
6 *Bookstore, Inc. v. Superior Court*, 739 F.2d 466, 472 (9th Cir. 1984).

7 The Court finds that Plaintiff’s request for injunctive relief is based on
8 speculative future injury that is insufficient to constitute irreparable injury. The
9 incidents at issue in Plaintiff’s amended complaint occurred on August 3, August 21,
10 and December 27, 2015. (ECF No. 30 at 2.) Even if these incidents resulted in
11 violations of Plaintiff’s Eighth Amendment rights, those past violations which
12 occurred nearly two years before the filing of the motion for preliminary injunctive
13 relief do not establish that he is subject to ongoing harm or faces an immediate threat
14 of irreparable harm. *See Midgett v. Tri-Cty. Metro. Transp. Dist.*, 254 F.3d 846, 850
15 (9th Cir. 2001); *see also Cohea v. Patzloff*, No. 10cv0437 IEG (RBB), 2010 WL
16 1200342, at *6 (S.D. Cal. Mar. 23, 2010) (finding no irreparable harm because, *inter*
17 *alia*, the allegations concerned incidents that occurred several years ago). Plaintiff
18 must provide specific facts which clearly show a credible threat of *future* injury. FED.
19 R. Civ. P. 65(b); *see also, e.g., Wallace v. Sosa*, No. 16-cv-01501-BAS-BGS, 2017
20 WL 469140, at *4 (S.D. Cal. Feb. 3, 2017). Plaintiff has not done so.

21 Plaintiff concedes that he was provided a permanent lower bunk chrono on
22 December 28, 2015—a mere one day after his final fall. (ECF No. 27 ¶132.)
23 Defendants have also provided evidence of Plaintiff’s permanent lower bunk chrono.
24 (ECF No. 38 Ex. B.) Although the Court has found that this evidence does not moot
25 Plaintiff’s claim for injunctive relief for a permanent lower back chrono not subject
26 to reevaluation, the evidence does undermine Plaintiff’s speculative assertions about
27 future injury simply because the chrono is subject to future review. *See, e.g.,*
28 *Wallace*, No. 2017 WL 469140, at *4 (no showing of irreparable harm to support

1 injunctive request for single cell status pending release date where plaintiff was
2 placed in single cell status subject to review at a later point). At this point, Plaintiff
3 has a lower bunk assignment with a permanent status. Plaintiff merely asserts that
4 there is a future “risk of being placed on the upper bunk again years later” due to
5 yearly review of his permanent lower bunk chrono, which in turn leads to a
6 “substantial serious risk of falling, and causing serious physical injury again.” (ECF
7 No. 30 at 4.) However, the possibility of some remote future injury is insufficient to
8 warrant injunctive relief. *See Winter*, 555 U.S. at 20. This is particularly true when,
9 as here, the threat of injury is contingent on a series of speculative occurrences. The
10 Court would need to assume that review of Plaintiff’s permanent lower bunk
11 assignment would result its rescission at some indeterminate point, Plaintiff would
12 be placed on a top bunk, Plaintiff would fall off the top bunk at some indeterminate
13 point thereafter, and Plaintiff would sustain physical injuries. The issuance of a
14 preliminary injunction is not appropriate to mitigate against these mere possibilities
15 and assumptions.

16 **III. CONCLUSION & ORDER**

17 Because Plaintiff has received a permanent lower bunk assignment and has
18 failed to show he is likely to suffer irreparable harm in the future simply because the
19 assignment is subject to review at a later date, the Court **DENIES** Plaintiff’s motion
20 for a preliminary injunction. (ECF No. 30.)

21 **IT IS SO ORDERED.**

22
23 **DATED: February 14, 2018**


Hon. Cynthia Bashant
United States District Judge