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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 RUBEN GIL,

12 Plaintiff,

13 v.

14 SANCHEZ, et al.,

15 Defendant.

Case No.: 17cv698-CAB-JMA

**ORDER DENYING MOTION FOR A
PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING
ORDER [Doc. No. 8]**

16
17 On April 5, 2017, Ruben Gil (“Plaintiff”), currently incarcerated at R.J. Donovan
18 Correctional Facility (“RJD”) located in San Diego, California, and proceeding *pro se*,
19 filed a civil rights complaint (“Compl.”) pursuant to 42 U.S.C. § 1983 (ECF No. 1). In
20 the complaint, Plaintiff alleges that his Eighth Amendment rights have been violated
21 because Defendants are sending him cellmates who are associates of “Security threat
22 Groups,” thus putting Plaintiff’s life at “serious risk.” (ECF No. 1 at 3.) On June 29,
23 2017, Plaintiff filed a motion for a preliminary injunction requiring all “defendants to
24 cease their abnormal behavior.” (ECF No. 8 at 3.) Plaintiff further alleges:

25 This is becoming an unsafe and continuing violation, where I can get harm.
26 I keep receiving cellies who are Security threat Groups associates. [T]his is
27 the fifth cellie I received from R&R who are recruits and associates of the
28 Security threat Groups. I am being tormented by this [*sic*] individuals every
single day, and expose [*sic*] to get harm. [Doc. No. 8 at 3.]

1 While Defendants have not yet responded to the complaint, on June 29, 2017, at
2 the Court’s request, Defendants filed a response to the motion for preliminary injunction.
3 [Doc. No. 11.] For the reasons set forth below, Plaintiff’s motion for a preliminary
4 injunction and temporary restraining order is DENIED.

5 FACTUAL BACKGROUND

6 Plaintiff filed a request for a preliminary injunction seeking “prospective injunctive
7 relief” so that Defendants would “cease their abnormal behavior” of assigning him
8 cellmates who are “recruits and associates” of unspecified “security threat groups”
9 because he feels “unsafe.” (ECF 8 at 3.) Plaintiff claims that he has had five such
10 cellmates, that he has been tormented by these cellmates every single day, exposed to
11 harm, and could be irreparably injured. (*Id.*) Plaintiff seeks an injunction preventing him
12 from being housed with inmates who are recruits or associates of any and all security
13 threat groups (*id.*), and that the Court appoint “a monitor with authority to observe
14 Defendants[’] conduct and thereby permit the federal Court to oversee compliance with
15 its continuing order” (*id.* at 7). Finally, Plaintiff states that he was attacked recently “at
16 other institutions.” (*Id.* at 6.) But he does not allege that he was attacked at RJD.

17 Upon arrival at an institution, an inmate is screened by a trained custody supervisor
18 for an appropriate housing assignment. Cal. Code Regs. tit. 15, § 3269(a). The custody
19 supervisor involved in the review and approval of an inmate’s housing assignment must
20 evaluate all factors to be considered when completing the initial housing review,
21 including, but not limited to, the inmate’s personal factors, length of sentence, enemies
22 and victimization history, criminal influence demonstrated over other inmates, previous
23 housing status, reasons for prior segregation, history of all in-cell assaults and/or
24 violence, security-threat-group affiliation, involvement in race-based incidents, nature of
25 commitment offense, history with prior cellmates, and Rules Violation Reports relating to
26 being found guilty of physical or sexual abuse, sodomy, or other acts of force against a
27 cellmate. *Id.*

1 In response to Plaintiff's motion, Defendants have submitted the declaration of D.
2 Williams, a lieutenant at the facility where Plaintiff has been housed since his arrival at
3 the prison. [Doc. No. 11-1.] In the declaration, D. Williams provides the following
4 information:

5 Security threat groups involve different inmate classifications related
6 to gangs. (Williams Decl. ¶ 3.)

7 It is very common for inmates to seek single-cell housing placement
8 so that they do not have to share a cell with another inmate. (*Id.* ¶ 4.)
9 Inmates are expected to double cell. (*Id.* ¶ 5.) Thus, RJD cannot
10 accommodate inmates' requests to be single celled unless they meet certain
11 very strict criteria, which is decided by a committee action after evaluating
12 various factors. (*Id.*)

13 Under California Code of Regulations title 15, § 3269, inmates are
14 required to accept housing assignments as directed by staff, are expected to
15 double cell, and are not entitled to single cell assignment, housing location
16 of choice, or to a cellmate of their choice.

17 While housed at a prior prison, Plaintiff was deemed to be an inmate
18 who needed to be housed on a sensitive-needs yard, rather than a general-
19 population yard. (*Id.* ¶ 7.) Sensitive-needs-yard placement is for inmates
20 who have concerns with programing on a general population yard. (*Id.* ¶ 8.)
21 Sensitive-needs-yard inmates participate together in large groups for such
22 activities as yard, chow, medical appointments, and pill line. (*Id.* ¶ 9.) There
23 is constant interaction among inmates on a sensitive needs yard facility. (*Id.*)
24 Thus, a sensitive-needs-yard inmate cannot reasonably claim that he cannot
25 safely be *placed in a cell* with any sensitive-needs-yard inmate, but that he
26 can safely *be on the same facility* with such inmates. (*Id.*) This indicates that
27 the inmate's goal is to obtain a single cell, rather than any realistic safety
28 concerns. (*Id.*)

29 While housed at Kern Valley State Prison, Plaintiff was allegedly the
30 victim of an assault by a cellmate on or about September 30, 2016. (*Id.* ¶
31 10.) As a result, Plaintiff was placed in administrative segregation and
32 subsequently transferred out of that prison on October 12, 2016, due to self-
33 expressed safety concerns. (*Id.*)

34 When Plaintiff arrived at RJD on October 13, 2016, a trained custody
35 supervisor reviewed the factors for housing placement for Plaintiff and
36 assigned him to Facility B, which is a sensitive needs yard. (*Id.* ¶ 11.)
37 Considering that Plaintiff is in close contact with inmates on Facility B
38 during yard, chow, and medical appointments or pill line (if applicable), it is
not reasonable for him to claim that he is only in danger when he is in a cell

1 with another inmate. (*Id.*) It appears that by claiming he cannot cell with any
2 security-threat-group inmate, Plaintiff is trying to eliminate possible
3 cellmates so that he will effectively be single-celled. (*Id.*) If the Courts were
4 to grant Plaintiff’s request then this would set a precedent for many inmates
to claim they need to be single-celled, and the prison could not function.
(*Id.*)

5 Plaintiff’s documented enemies were taken into account in his
6 housing placement. (*Id.* ¶ 12.) Plaintiff has not been housed in the same cell,
7 or on the same facility with any documented enemy. (*Id.*) The prison has a
8 system in place to flag enemies, so that enemies are not placed on the same
9 facility. (*Id.*) Enemies can be within the same institution, but they are always
housed on separate facilities. (*Id.*) Prison facilities are separated by guarded
fences, with inmates not allowed to be on other facilities. (*Id.*)

10 Plaintiff’s current cellmate does not have security-threat-group status.
11 (*Id.* ¶ 13.) Additionally, none of his prior cellmates at RDJ have had
security-threat-group status. (*Id.*)

12 Lt. Williams is not aware of any reasonable threat to Plaintiff from his
13 current assigned cellmate at RJD. (*Id.* ¶ 14.)

14 DISCUSSION

15 A. Legal Standard.

16 Procedurally, a federal district court may issue emergency injunctive relief only if
17 it has personal jurisdiction over the parties and subject matter jurisdiction over the
18 lawsuit. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999)
19 (noting that one “becomes a party officially, and is required to take action in that
20 capacity, only upon service of summons or other authority-asserting measure stating the
21 time within which the party served must appear to defend.”). The court may not attempt
22 to determine the rights of persons not before it. *See, e.g., Hitchman Coal & Coke Co. v.*
23 *Mitchell*, 245 U.S. 229, 234-35 (1916); *Zepeda v. INS*, 753 F.2d 719, 727-28 (9th Cir.
24 1983); *Lathrop v. Unidentified, Wrecked & Abandoned Vessel*, 817 F. Supp. 953, 961
25 (M.D. Fl. 1993); *Kandlbinder v. Reagan*, 713 F. Supp. 337, 339 (W.D. Mo. 1989); *Suster*
26 *v. Marshall*, 952 F. Supp. 693, 701 (N.D. Ohio 1996); *see also Califano v. Yamasaki*, 442
27 U.S. 682, 702 (1979) (injunctive relief must be “narrowly tailored to give only the relief
28 to which plaintiffs are entitled”). Under Federal Rule of Civil Procedure 65(d)(2) an

1 injunction binds only “the parties to the action,” their “officers, agents, servants,
2 employees, and attorneys,” and “other persons who are in active concert or participation.”
3 Fed. R. Civ. P. 65(d)(2)(A)-(C).

4 Substantively, “[a] plaintiff seeking a preliminary injunction must establish that he
5 is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
6 absence of preliminary relief, that the balance of equities tips in his favor, and that an
7 injunction is in the public interest.” *Glossip v. Gross*, __ U.S. __, 135 S. Ct. 2726, 2736-
8 37 (2015) (quoting *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20
9 (2008)). “Under *Winter*, plaintiffs must establish that irreparable harm is likely, not just
10 possible, in order to obtain a preliminary injunction.” *Alliance for the Wild Rockies v.*
11 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

12 Finally, the Prison Litigation Reform Act (“PLRA”) further requires prisoners to
13 satisfy additional requirements when seeking preliminary injunctive relief against prison
14 officials:

15 Preliminary injunctive relief must be narrowly drawn, extend no further than
16 necessary to correct the harm the court finds requires preliminary relief, and
17 be the least intrusive means necessary to correct that harm. The court shall
18 give substantial weight to any adverse impact on public safety or the
19 operation of a criminal justice system caused by the preliminary relief and
20 shall respect the principles of comity set out in paragraph (1)(B) in tailoring
21 any preliminary relief.

22 18 U.S.C. § 3626(a)(2).

23 Section 3626(a)(2) places significant limits upon a court’s power to grant
24 preliminary injunctive relief to inmates, and “operates simultaneously to restrict the
25 equity jurisdiction of federal courts and to protect the bargaining power of prison
26 administrators—no longer may courts grant or approve relief that binds prison
27 administrators to do more than the constitutional minimum.” *Gilmore v. People of the*
28 *State of California*, 220 F.3d 987, 998-99 (9th Cir. 2000).

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1 B. Analysis.

2 First, Defendants have now been served with the complaint. (ECF Doc. Nos. 9 and
3 10.) Therefore, the Court has personal jurisdiction over the Defendants at this time. *See*
4 Fed. R. Civ. P. 65(d)(2); *Murphy Bros., Inc.*, 526 U.S. at 350; *Zepeda*, 753 F.2d at 727-
5 28.

6 However, even though the Court has personal jurisdiction over the entities or
7 persons Plaintiff seeks to enjoin, Plaintiff has failed to establish a likelihood of success or
8 imminent irreparable harm required to support a preliminary injunction. *See Winter*, 555
9 U.S. at 20; *Alliance for the Wild Rockies*, 632 F.3d at 1131. “The fact that plaintiff has
10 met the pleading requirements allowing him to proceed with the complaint does not, ipso
11 facto, entitle him to a preliminary injunction.” *Claiborne v. Blausler*, No. CIV S-10-2427
12 LKK, 2011 WL 3875892, at *8 (E.D. Cal. Aug. 31, 2011), *report and recommendation*
13 *adopted*, No. CIV S-10-2427 LKK, 2011 WL 4765000 (E.D. Cal. Sept. 29, 2011).

14 Here, Plaintiff has failed to show a likelihood of success. In his underlying
15 lawsuit, Plaintiff claims that his cellmate is in an unspecified “security threat group,” and
16 thus, he is in danger. (ECF 1 at 3-8.) In his moving papers, Plaintiff does not specify
17 which gang his cellmate is associated with, or how that specifically creates a threat to
18 him. (*Id.*) RDJ has placed Plaintiff on a sensitive needs yard, which is for inmates who
19 are no longer involved with gang activity. (Williams Decl. ¶ 8.) Also, Plaintiff’s housing
20 facility is free of any of his documented enemies. (*Id.* ¶ 12.) Additionally, none of
21 Plaintiff’s cellmates to date at RJD, including his current cellmate, have security-threat-
22 group status. (*Id.* ¶ 13.) Therefore, Plaintiff has failed to show a likelihood of success.

23 In addition, Plaintiff has failed to show irreparable harm. To meet the “irreparable
24 harm” requirement, Plaintiff must do more than simply *allege* imminent harm; he must
25 demonstrate it. *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th
26 Cir. 1988). This requires Plaintiff to demonstrate by specific facts that there is a credible
27 threat of immediate and irreparable harm. Fed. R. Civ. P. 65(b). Mere “[s]peculative
28 injury does not constitute irreparable injury sufficient to warrant granting a preliminary

1 injunction.” *Caribbean Marine*, 844 F.2d at 674-75. Irreparable harm has been described
2 as “[p]erhaps the single most important prerequisite for the issuance of a preliminary
3 injunction.” *See* 11A Wright & Miller, Fed. Prac. & Proc. § 2948.1 (3d ed.). Indeed,
4 where a plaintiff fails to demonstrate a likelihood of irreparable harm without preliminary
5 relief, the court need not address the remaining elements of the preliminary injunction
6 standard. *See Center for Food Safety v. Vilsack*, 636 F.3d 1166, 1174 (9th Cir. 2011).

7 Here, Plaintiff does not state that he has actually been attacked or harmed at RJD
8 (his current prison); rather he states that he was “attacked recently at the other Institution
9 by the Security threat Groups.” (ECF 8 at 6.) Moreover, Plaintiff does not explain why
10 he is safe in his yard, where he is in close contact with many fellow yard inmates, yet he
11 is somehow in danger in his cell. Finally, Plaintiff speculates that he might be in danger,
12 not that he actually is in danger: “[t]his could be irreparable injury for my well-being . . .
13 .” (ECF 8 at 3.) Therefore, Plaintiff has failed to show irreparable harm.

14 Accordingly, the Court finds Plaintiff has failed to establish either a likelihood of
15 success on the merits of his Eighth Amendment claims at this stage of the proceedings, *or*
16 the immediate or irreparable harm required to justify extraordinary injunctive relief.
17 *Lyons*, 461 U.S. at 102; *see also Dymo Indus. v. Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th
18 Cir. 1964) (“The grant of a preliminary injunction is the exercise of a very far reaching
19 power never to be indulged in except in a case clearly warranting it.”).

20 CONCLUSION

21 For the reasons set forth above, Plaintiff’s motion for preliminary injunction and
22 temporary restraining order [Doc. No. 8] is **DENIED**.

23 **IT IS SO ORDERED.**

24 Dated: July 6, 2017

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27 Hon. Cathy Ann Bencivengo
28 United States District Judge