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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BRIAN THOMAS MATHEIS,  
Plaintiff,  
v.  
CDCR et al.,  
Defendants.

Case No.: 20-cv-2100-GPC-AHG

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

**[ECF No. 11]**

Plaintiff, currently incarcerated at Richard J. Donovan Correctional Facility (“RJD”) and proceeding pro se, filed this Motion for Temporary Restraining Order and Preliminary Injunction (“Motion”). ECF No. 11. In general, the Motion requests the Court to: (1) order Defendants and related persons to cease and desist any retaliatory acts against Plaintiff; (2) order Defendants to transfer Plaintiff to a different California Department of Corrections and Rehabilitation (“CDCR”) Level III institution; and (3) issue a protection order for those who provided supporting declarations for Plaintiff. Upon considering the Motion and the related papers, the Court **DENIES** the Motion.

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1     **I. BACKGROUND**

2         **A. Factual Background**

3             Relevant to this Motion, Plaintiff alleges the following.<sup>1</sup> On September 21, 2019,  
4 Defendant Sergeant C. Godinez (“Defendant Godinez”) arrived at Plaintiff’s cell to  
5 interview him about a grievance he had filed regarding missing property. After  
6 instructing Plaintiff’s cellmate to leave, Defendant Godinez sexually abused and harassed  
7 Plaintiff, and told him to withdraw his grievance or else Defendant Godinez would  
8 falsely accuse Plaintiff of having nails in the cell. ECF No. 1 at 4–5.<sup>2</sup> On January 11,  
9 2020, Defendant Godinez once again sexually abused and harassed Plaintiff, this time in  
10 an isolation cage at the facility gym. Plaintiff returned to his cell and found that more  
11 property was either missing or was outside of his cell door “on the tier.” *Id.* at 6.

12             On January 15, 2020, Plaintiff filed his first grievance related to Defendant  
13 Godinez. This grievance solely alleges the theft of Plaintiff’s property on January 11,  
14 2020. ECF No. 5 at 16–18.

15             On February 10, 2020, Plaintiff filed his grievance specifically alleging that  
16 Defendant Godinez sexually abused and harassed him on September 21, 2019 and  
17 January 11, 2020. ECF No. 5 at 43–46. Investigations were subsequently conducted,  
18 including interviewing two witnesses Plaintiff identified. According to the investigation,  
19 both witnesses contradicted Plaintiff’s allegations, and testified that Defendant Godinez  
20 did nothing wrong. *See* ECF No. 19-3 at 3. Ultimately the investigations concluded that  
21 Plaintiff’s allegations were unfounded. *Id.* at 7, 9.

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24 <sup>1</sup> The Court provides additional details of Plaintiff’s Complaint in its January 5, 2021  
25 Order, ECF No. 8.

26 <sup>2</sup> References to specific page numbers in a document filed in this case correspond to the  
27 page numbers assigned by the Court’s Electronic Case Filing (“ECF”) system.



1 addition, “since January 9, 2021, all correctional officers at Donovan [RJD] wear body  
2 cameras while on duty.” ECF No. 19 at 13.

3 Plaintiff filed his Reply on February 17, 2021. ECF No. 22. In addition, one of  
4 the declarants, Mr. Michael Angelo Lena, *see* ECF No. 11 at 20, filed a Letter *nunc pro*  
5 *tunc* February 11, 2021. ECF No. 21. Along with various claims against RJD and  
6 CDCR, Mr. Lena states that he too fears retaliation from the RJD staff for submitting the  
7 declaration in support of Plaintiff, *see id.* at 1.

8 On February 22, 2021, Defendant Pollard filed an Ex Parte Application for Leave  
9 to File an Amended Declaration of Defendant Godinez, attempting to correct a  
10 typographical error. ECF No. 24. The Court granted the Application. ECF No. 25.

11 The Court held a hearing on the Motion on February 23, 2021. ECF No. 26.

## 12 **II. DISCUSSION**

13 The Court declines to grant Plaintiff’s Motion for two reasons. First, the Motion is  
14 asking the Court to enjoin parties outside of the Complaint based on allegations not pled  
15 in the Complaint. The Court lacks the jurisdiction and authority to do so. Second, even  
16 if the Court had such jurisdiction and authority, Plaintiff’s Motion fails. A preliminary  
17 injunction is “an extraordinary remedy that may only be awarded upon a clear showing  
18 that the plaintiff is entitled to such relief.” *Winter v. NRDC*, 555 U.S. 7, 22, 129 S. Ct.  
19 365, 376, 172 L. Ed. 2d 249 (2008) (citation omitted). In analyzing the factors to grant  
20 such relief, the Court finds that Plaintiff failed to make such “clear showing” that would  
21 warrant a preliminary injunction or temporary restraining order.

### 22 **A. Jurisdiction and Authority to Issue the Injunction**

23 Plaintiff’s Motion is based on the claim that “[s]ince Defendants and prison staff  
24 here have become aware of plaintiff’s complaint against them that is before this Court,  
25 Plaintiff has been subjected to multiple levels of retaliation.” ECF No. 11 at 1. However,  
26 Plaintiff’s supporting documents and Reply brief identify “staff members” as retaliating  
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1 against Plaintiff and “other inmates” as harassing Plaintiff, but not any of the named-  
2 Defendants. ECF No. 11 at 13–22; ECF No. 22 at 4. These allegations against “staff  
3 members” and “other inmates” are not part of the original Complaint. And no part of the  
4 Motion alleges that the named-Defendants are directing the retaliation or failing to  
5 remedy the situation after becoming aware of the retaliation. In fact, the main Defendant,  
6 Defendant Godinez, cannot access the areas where Plaintiff is incarcerated.

7         These shortcomings present two hurdles, preventing the Court from issuing a  
8 preliminary injunction or temporary restraining order. First, the Court lacks jurisdiction  
9 to issue any cease-and-desist order or protective order against any unnamed party. *See*  
10 *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 110 (1969) (declining to  
11 enjoin an unnamed party that was neither served nor formally appeared at trial because  
12 the court lacked jurisdiction over the party); *see also* Fed. R. Civ. P. 65(a), (b) (limiting  
13 the court’s authority to issue preliminary injunctions and temporary restraining orders to  
14 those against “the adverse party”). “A federal court may issue an injunction if it has  
15 personal jurisdiction over the parties and subject matter jurisdiction over the claim; it  
16 may not attempt to determine the rights of persons not before the court.” *Zepeda v. U.S.*  
17 *INS*, 753 F.2d 719, 727 (9th Cir. 1983). Since the persons allegedly committing the  
18 retaliation are staff and other inmates of RJD—i.e., those who are not listed as a  
19 defendant in the Complaint—the Court has no authority to issue a preliminary injunction  
20 or temporary restraining order against them.

21         Second, “[w]hen a plaintiff seeks injunctive relief based on claims not pled in the  
22 complaint, the court does not have the authority to issue an injunction.” *Pac. Radiation*  
23 *Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015). “A court’s  
24 equitable power lies only over the merits of the case or controversy before it.” *Id.* Thus  
25 for a preliminary injunction or temporary restraining order, “there must exist a  
26 relationship between the injury claimed in a motion for injunctive relief and the conduct  
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1 alleged in the underlying complaint.” *Id.* at 638. Specifically, courts consider requesting  
2 injunctive relief based on retaliation over filing the complaint to be “entirely different and  
3 separate” from the underlying complaint. *See id.* at 636.

4 At minimum, Plaintiff would need to address these two defects by filing a  
5 supplemental pleading pursuant to Federal Rule of Civil Procedure 15(d) and re-noticing  
6 his motion for a preliminary injunction.

### 7 **B. Four-Factor Analysis of the Requested Injunctive Relief**

8 But even if the Court had jurisdiction and authority to do so, an injunctive relief  
9 requested by the Motion is not warranted. To issue a preliminary injunction or temporary  
10 restraining order, the Court analyzes four factors: (1) likelihood of success on the merits,  
11 (2) likelihood of irreparable harm absent the relief, (3) balance of equities tipping in the  
12 applicant’s favor, and (4) public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008);  
13 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)  
14 (noting that preliminary injunction and temporary restraining order standards are  
15 “substantially identical”). Upon considering each factor, the Court concludes that  
16 Plaintiff failed to demonstrate the need to issue such “an extraordinary remedy.” *Winter*,  
17 555 U.S. at 24.

18 First, Plaintiff is not likely to succeed on the merits. The Court parses out two  
19 different issues for clarity. One is the retaliation allegations made in the Motion. This  
20 fails for multiple reasons—the Court need not consider them since they are external to the  
21 allegations in the Complaint, *see McMichael v. Napa Cty.*, 709 F.2d 1268, 1273 n.4 (9th  
22 Cir. 1983); the Motion’s allegations lack specificity in terms of who is retaliating against  
23 Plaintiff; and Plaintiff failed to prove the five elements to establish a retaliation claim, *see*  
24 *Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005).

25 The other is the allegations made in the Complaint alone. Here the Court faces the  
26 difficulty of pitting one declaration versus another. *See, e.g.*, ECF No. 24-2 (denying  
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1 Plaintiff’s allegations, including claims of sexual misconduct). What does appear to be  
2 true is that even the cell inmate witness—the one that Plaintiff himself provided as part of  
3 the investigations—contradicted Plaintiff’s assertions. *See* ECF No. 22 at 3. And as  
4 much as Plaintiff avers institutional bias, the only record in front of the Court at this  
5 moment is that Plaintiff’s allegations have been deemed “unfounded.” ECF No. 19-3 at  
6 7, 9. With the burden of persuasion lying on the applicant seeking injunctive relief, *see*  
7 *Winter*, 555 U.S. at 22 (requiring “a clear showing”), Plaintiff lacks the requisite facts to  
8 prevail on the merits.<sup>3</sup>

9         Second, Plaintiff failed to demonstrate irreparable injury absent the relief. First  
10 and foremost, Defendant Godinez cannot access the areas where Plaintiff currently  
11 inhabits. In addition, all RJD correctional officers must now wear body cameras, which  
12 not only deters any tortious activity, it allows Plaintiff to specifically identify any staff  
13 member or inmate who may/did retaliate against Plaintiff. The Court views much of the  
14 Motion’s assertions of injury as too general and conclusory, especially when clearly  
15 opportunities have existed to precisely identify the who, when, and where of Plaintiff’s  
16 retaliation claims. *See, e.g.*, ECF No. 11 at 13–18, 32 (presenting exhibits which are  
17 signed or prepared by the staff members). Regarding Plaintiff’s proprietary interests, it  
18 plainly does not satisfy the second factor—Plaintiff may be compensated upon the  
19 resolution of this lawsuit.

20         The Court is thus ultimately left with Plaintiff’s claims of trauma from the alleged  
21 sexual misconduct that occurred in September 2019 and January 2020. *See* ECF No. 22  
22 at 5. The Court does not treat such harms (and allegations thereof) lightly. Nonetheless,  
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25 <sup>3</sup> And because Plaintiff is not likely to succeed on the merits regarding the main claim of  
26 sexual abuse and harassment, the Court agrees with Defendant Pollard that the rest of the  
27 Complaint (such as allegations of retaliation or failure to respond) also falls.

1 such is insufficient to establish that an *irreparable* injury will be incurred absent the  
2 granting of relief.

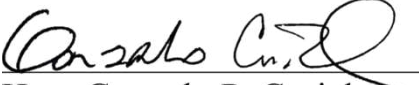
3 Lastly, the balance of equities and public interest favor Defendants. “The duty to  
4 protect inmates’ constitutional rights . . . does not confer the power to manage prisons,  
5 for which courts are ill-equipped, or the capacity to second-guess prison administrators.  
6 Federal courts should not, in the name of the Constitution, become enmeshed in the  
7 minutiae of prison operations.” *Toussaint v. McCarthy*, 801 F.2d 1080, 1086 (9th Cir.  
8 1986), *abrogated in part on other grounds by Sandin v. Conner*, 515 U.S. 472, 482–83  
9 (1995). CDCR holds the “widest latitude in the dispatch of its own internal affairs.”  
10 *Gomez v. Vernon*, 255 F.3d 1118, 1128 (9th Cir. 2001) (quoting *Rizzo v. Goode*, 423 U.S.  
11 362 378–79 (1976)). The Court cannot substitute CDCR’s own judgment on what would  
12 best serve the public interest, such as calculating whether transferring an inmate during  
13 times of COVID-19 would be net beneficial.<sup>4</sup> *See id.* at 1129; *see also* 18 U.S.C. §  
14 3626(a)(2) (constraining the courts’ preliminary injunction power, in which courts “shall  
15 give substantial weight to any adverse impact on public safety or the operation of a  
16 criminal justice system caused by the preliminary relief”).

### 17 **III. CONCLUSION**

18 For the foregoing reasons, the Court **DENIES** Plaintiff’s Motion for Temporary  
19 Restraining Order and Preliminary Injunction.

20 **IT IS SO ORDERED.**

21 Dated: February 23, 2021

22   
23 Hon. Gonzalo P. Curiel  
24 United States District Judge

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26 <sup>4</sup> The Court declines to grant Defendant Pollard’s Request for Judicial Notice, ECF No.  
27 19-1, because the Court did not rely on the underlying documents to issue this Order.