

1 Complaint, ECF No. 11-1 at 19. Plaintiff alleges that, on October 23,
2 2013, following an altercation with another prisoner, he was placed on
3 administrative segregation in the IMU at the Washington State
4 Penitentiary. Complaint, ECF No. 11-1 at 3. While in the IMU,
5 Plaintiff was subjected to constant illumination, and, as a result, he
6 alleges that he experienced sleeping problems, migraines,
7 disorientation, confusion, eye strain, and other physical and
8 psychological symptoms. *Id.* at 4, 14. Plaintiff stated at the
9 December 17, 2014 telephonic scheduling conference that he was
10 released from the IMU in August 2014. See also Decl. of Jason Sutton,
11 ECF No. 33 at ¶ 35 (stating that Plaintiff was in the IMU from
12 November 13, 2013 to August 2014).

13 **II. LEGAL STANDARD¹**

14 "A preliminary injunction is not a preliminary adjudication on
15 the merits: it is an equitable device for preserving the status quo
16 and preventing the irreparable loss of rights before judgment."
17 *Textile Unlimited v. A..BMH and Co., Inc.*, 240 F.3d 781, 786 (9th Cir.
18 2001). "A preliminary injunction is an extraordinary and drastic
19 remedy," that "is never awarded as of right." *Munaf v. Geren*, 553
20 U.S. 674, 689-90 (2008) (internal quotations omitted). Instead,

21 A plaintiff seeking a preliminary injunction must establish
22 that he is likely to succeed on the merits, that he is
23 likely to suffer irreparable harm in the absence of
preliminary relief, that the balance of equities tips in

24 ¹ Given that Plaintiff requests permanent relief and the fact
25 that both parties have received notice and been heard on this
26 matter, the Court analyzes Plaintiff's motion as if it seeks a
preliminary injunction and not a temporary restraining order.
See Fed. R. Civ. P. 65(b).

1 his favor, and that an injunction is in the public
2 interest.

3 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

4 Where, as here, a mandatory injunction is sought—that is, an
5 injunction which requires a party to take an affirmative action and
6 alter the status quo—courts must be “extremely cautious.” *Martin v.*
7 *Int’l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984). A mandatory
8 injunction “should not be issued unless the facts and law clearly
9 favor the moving party” or “unless extreme or very serious damage will
10 result.” *Anderson v. United States*, 612 F.2d 1112, 1114-15 (9th Cir.
11 1979) (internal quotation marks and citations omitted).

12 In civil actions regarding prison conditions, the Prison
13 Litigation Reform Act requires that preliminary injunctive relief “be
14 narrowly drawn, extend no further than necessary to correct the
15 harm . . . and be the least intrusive means necessary.” 18 U.S.C.
16 § 3626(a)(1)(C)(2). Additionally, “[t]he court shall give substantial
17 weight to any adverse impact on public safety or the operation of a
18 criminal justice system.” *Id.*

19 **III. ANALYSIS**

20 **A. Standing**

21 Plaintiff must have standing to obtain a preliminary injunction.
22 See *Melendres v. Arpaio*, 695 F.3d 990, 997 (9th Cir. 2012). To have
23 standing, he must show that he suffers an injury that is concrete,
24 particularized, actual or imminent, and not conjectural or
25 hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560
26 (1992). Here, Plaintiff alleges that he suffered and continues to

1 suffer various physical injuries as a result of being exposed to
2 constant illumination while housed in the IMU. However, Plaintiff's
3 injury is not ongoing because he is no longer housed in the IMU and
4 subjected to constant illumination. Therefore, to have standing, he
5 must establish "a sufficient likelihood that he will again be wronged
6 in a similar way." *City of Los Angeles v. Lyons*, 461 U.S. 95, 111
7 (1983). This he has not done.²

8 Plaintiff repeatedly argues that he may be placed back in the
9 IMU. Decl. of Jason Sutton, ECF No. 29 at 1 ("I may once again be
10 transferred to said Unit(s) [the IMU] in the future. This is
11 foreseeable."); Plaintiff's Motion for a Preliminary Injunction or
12 Temporary Restraining Order, ECF No. 29 at 4 ("[A]t any time or at any
13 moment, Mr. Sutton can possibly be restrained once again, and then
14 housed (once again), in Segregation/Isolation."); *id.* at 5 ("It is
15 expected that Plaintiff will end up back in the Segregation Unit(s) at
16 any moment."); *see also* Decl. of Jason Sutton, ECF No. 33 *passim*.
17 However, Plaintiff's argument fails because he does not provide any
18 evidence to support it. *See Brown v. Or. Dept. of Corr.*, 751 F.3d
19 983, 990 (9th Cir. 2014) (affirming grant of summary judgment to
20 defendants "because the record shows that [the plaintiff] has been
21 released from the IMU and there is no evidence that he is likely to
22 again be subject to the challenged conditions"). Plaintiff was placed
23 in the IMU before filing this suit because he assaulted another
24 prisoner. ECF No. 7, at 4. Although it is certainly possible that

25 ² Because Plaintiff's motion for class certification was denied, *see* ECF No.
26 31, the Court does not consider Plaintiff's submission of affidavits from
other prisoners detailing their injuries. Injury to another person cannot
establish standing for Mr. Sutton, who is the only plaintiff in this case.

1 Plaintiff may again be placed in the IMU for this or another reason,
2 there is an equal or even greater possibility that he will not.
3 Indeed, given Plaintiff's experience in the IMU, it seems likely that
4 Plaintiff will avoid conduct that may result in him being returned to
5 the IMU.

6 The Court finds that Plaintiff has not established that he
7 suffers an imminent injury, as opposed to a hypothetical one. See
8 *Lujan*, 504 U.S. at 560. As in *Lyons*, the legality of the constant
9 illumination Plaintiff was subjected to will be determined on the
10 merits in the present suit for damages, so Plaintiff has an adequate
11 remedy at law for the past injury he suffered. See *Lyons*, 461 U.S. at
12 111. Plaintiff does not have standing to seek a preliminary
13 injunction.

14 **B. Likelihood of Irreparable Harm**

15 Even if Plaintiff had standing to seek a preliminary injunction,
16 he would not be entitled to one because he has not met the
17 requirements. See *Winter*, 555 U.S. at 20 (setting forth the
18 requirements). Plaintiff has not demonstrated that he is likely to
19 suffer irreparable harm unless a preliminary injunction is issued. As
20 discussed above, Plaintiff has not shown that he will once again be
21 placed in the IMU, and his statements that he may be placed there are
22 unsupported. Additionally, Plaintiff's allegations detailing his
23 continuing physical ailments resulting from past constant
24 illumination, see ECF No. 29 at 4, do not establish a likelihood of
25 irreparable harm because even if the Court were to order that constant

1 illumination in the IMU cease, Plaintiff would continue to suffer the
2 alleged physical effects.

3 **C. Balance of Equities and Public Interest**

4 Plaintiff also fails to demonstrate that a preliminary
5 injunction would be in the public interest or that the balance of
6 equities is in his favor. Plaintiff argues that the threat of harm to
7 him is greater than the harm to Defendants. ECF No. 29 at 5. He also
8 argues that a preliminary injunction is in the public interest because
9 it would prevent prisoners subjected to constant illumination from
10 potentially taking out their anger at the practice on prison officials
11 while they are confined or on innocent citizens after they are
12 released. *Id.* Defendants respond that the constant illumination in
13 the IMU serves an important security interest and protects staff and
14 inmates. ECF No. 30 at 11; see also Decl. of Juan Palomo, ECF No. 30-
15 2 (explaining security and safety reasons for constant illumination in
16 the IMU). Defendants also argue that "the public has a strong
17 interest in giving state correctional officials the discretion to
18 manage correctional facilities." ECF No. 30 at 11.

19 The Court finds that the security and safety of prison officials
20 and inmates housed in the IMU are important interests that could be
21 harmed by a preliminary injunction requiring that the lights be turned
22 off. The Court declines to consider Plaintiff's conjectural argument
23 about harm that may be inflicted by prisoners angry about the practice
24 of constant illumination. The Court understands the potential harm to
25 Plaintiff that could be caused by constant illumination if he were to
26 be returned to the IMU but, for the reasons discussed above, finds

1 that this hypothetical scenario does not tip the balance of equities
2 in Plaintiff's favor or outweigh the public interest in prison safety
3 and security. For this reason as well as those given above, Plaintiff
4 is not entitled to a preliminary injunction.

5 **D. Likelihood of Success on the Merits**

6 As Plaintiff suggests, ECF No. 29 at 2-3, the Court is familiar
7 with the Ninth Circuit case law regarding constant illumination.
8 However, given the Court's findings above that Plaintiff lacks
9 standing and does not fulfill the other requirements to obtain a
10 preliminary injunction, the Court finds that the merits of this case
11 are more properly analyzed at summary judgment with a full record or
12 at trial than at the preliminary injunction stage.

13 **IV. CONCLUSION**

14 The Court finds that Plaintiff does not have standing to obtain
15 a preliminary injunction and that even if he did have standing,
16 Plaintiff has not met the requirements for issuance of a preliminary
17 injunction. Accordingly, **IT IS HEREBY ORDERED**, Plaintiff's Motion for
18 a Preliminary Injunction or a Temporary Restraining Order, **ECF No. 29**,
19 is **DENIED**.

20 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
21 Order and provide copies to all counsel and Plaintiff.

22 **DATED** this 7th day of April 2015.

23 s/Edward F. Shea

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EDWARD F. SHEA

25 Senior United States District Judge
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