

1 Pending before the Court is Plaintiff's Motion for an Emergency Injunction filed on
2 February 2, 2011. (Mot., ECF No. 2.) It appears that Plaintiff is requesting a preliminary
3 injunction or temporary restraining order. Plaintiff requests an "Emergency Injunction
4 Order" directing that he be given his medications, including the medicines he needs for
5 treatment of his diabetes. (Id.) Plaintiff also filed a Motion for a Preliminary Injunction on
6 April 20, 2011, requesting similar relief. (Mot., ECF No. 13.) The Court will deal with this
7 Motion in a separate order.
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9 **II. ARGUMENT**

10 In the Motion, Plaintiff complains:

11 He is currently housed at the California State Prison in Corcoran, California ("SATF")
12 and he is not receiving any medical care for his diabetes. Plaintiff has been a Type 2
13 insulin-dependent diabetic since 2001. He suffers from both hypo- and hyper-glycemia,
14 i.e. low and high blood sugar levels. From approximately January 2010 to May 2010,
15 Plaintiff was housed at two different correctional institutions where he was treated with
16 insulin and provided with diabetic snacks.
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18 On or about July 26, 2010, Plaintiff was transferred to SATF, where he is presently
19 housed. Plaintiff was initially treated at SATF with insulin and diabetic snacks. On or
20 about September 27, 2010, Plaintiff was determined, without any medical testing, to no
21 longer be diabetic. Nurse LeMay instructed the custody officers in Plaintiff's dorm to
22 confiscate all of Plaintiff's diabetes-related medications. Nurse LeMay acted on orders
23 from Physician's Assistant Byers, who in turn acted on orders from the Chief Medical
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1 Officer.¹ All testing for diabetes was terminated in November 2010.

2 Thus, Plaintiff has not received any medical treatment for his diabetes since
3 September 27, 2010. His previously prescribed medicines have been confiscated. Plaintiff
4 is concerned about his health and alleges that he needs his diabetic medicines to “sustain
5 [l]ife” and to avoid reaching a “critical stage”. He requests an “Emergency Injunction Order”
6 directing that he be provided with his necessary medicines.
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8 **III. LEGAL STANDARDS**

9 The Court interprets Plaintiff’s Petition as a request for a preliminary injunction
10 and/or, more appropriately given the status of this case, a request for a temporary
11 restraining order. Regardless, the standards, and the Court’s analysis and conclusion,
12 below, are effectively the same for each.
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14 Injunctive relief, whether temporary or permanent, is an “extraordinary remedy,
15 never awarded as of right.” Winter v. Natural Res. Defense Council, 555 U.S. 7, 22, 129
16 S.Ct. 365, 376 (2008). “A plaintiff seeking a preliminary injunction must establish that he
17 is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence
18 of preliminary relief, that the balance of equities tips in his favor, and that an injunction is
19 in the public interest.” Am. Trucking Ass’ns, Inc. v. City of Los Angeles, 559 F.3d 1046,
20 1052 (9th Cir. 2009) (quoting Winter, 555 U.S. at 20).
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22 In cases brought by prisoners involving conditions of confinement, the Prison
23 Litigation Reform Act (PLRA) requires that any preliminary injunction “be narrowly drawn,
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25 ¹ Nurse LeMay and Physicians Assistant Byers were not named as defendants in Plaintiff’s
26 original Complaint, and the Chief Medical Officer was not identified in the original Complaint. (Compl.,
27 ECF No. 1). Plaintiff has since named Nurse LeMay and Physicians Assistant Byers as defendants and
identified the Chief Medical Officer. (Am. Compl., ECF No. 15.)

1 extend no further than necessary to correct the harm the court finds requires preliminary
2 relief, and be the least intrusive means necessary to correct the harm." 18 U.S.C. §
3 3626(a)(2).

4 **IV. ANALYSIS**

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6 _____ The Court find that, at this stage of the proceedings, Plaintiff fails to satisfy the legal
7 prerequisites for injunctive relief. As noted, to succeed on such a motion, Plaintiff must
8 establish that he is likely to succeed on the merits, that he is likely to suffer irreparable
9 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and
10 that an injunction is in the public interest. Am. Trucking Ass'ns, Inc. v. City of Los Angeles,
11 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting Winter, 129 S.Ct. at 374).

12
13 Plaintiff's has alleged irreparable harm if relief is denied, but the facts suggest
14 otherwise, and he has not, in any event, presented any basis for finding that the other three
15 prerequisites for injunctive relief are present.

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17 Plaintiff has not demonstrated that he will succeed on the merits of his case. His
18 primary allegation appears to rest on an Eighth Amendment claim that he has been denied
19 adequate medical treatment. "[T]o maintain an Eighth Amendment claim based on prison
20 medical treatment, an inmate must show 'deliberate indifference to serious medical
21 needs.'" Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). Plaintiff has not addressed
22 this issue in his moving papers. Plaintiff's First Amended Complaint has not yet been
23 screened to evaluate whether it states a cognizable claim. Thus at this point, the Court has
24 no basis upon which to find a likelihood that Plaintiff will succeed on the merits.

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26 Plaintiff does make the conclusory assertion that his health and his life will be at risk

1 if the injunction is not granted, but provides no information to support the bare claim;
2 nothing provided to the Court suggests he will suffer injury without his medications or that
3 the threat of injury is real and immediate, not conjectural and hypothetical. See, e.g., City
4 of Los Angeles v. Lyons, 461 U.S. 95, 101-102, 103 S.Ct. 1660 (1983). The fact that he
5 has not identified any specific adverse consequences of having gone without his
6 medication since September 2010 tends to belie his claim.

8 Plaintiff does not address the third or fourth elements, i.e., the balancing of equities
9 and public interest concerns. First, absent a showing sufficient to find harm to Plaintiff,
10 there is nothing to tip the balance of equities in Plaintiff's favor. Second, while the public
11 has an interest in seeing everyone, including Plaintiff, receive the best practical medical
12 care, the Court can not make a determination on the facts before it as to the best medical
13 course for Plaintiff. At least one medical practitioner has determined that Plaintiff does not
14 need the treatment he seeks. The record before the Court does not justify the Court
15 substituting its judgment for that of the medical practitioner.

17 The various criteria not having been met, Plaintiff is not entitled to a preliminary
18 injunctive relief.

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20 **V. CONCLUSION**

21 Based on the foregoing, the Court HEREBY RECOMMENDS that Plaintiff's Petition
22 for an Emergency Injunction for Medical Care be DENIED without prejudice to Plaintiff's
23 right to move again in the future if medical evidence which supports his claims is secured
24 and produced with any such renewed motion.

25 These Findings and Recommendations are submitted to the United States District
26 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
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1 thirty (30) days after being served with these Findings and Recommendations, any party
2 may file written objections with the Court and serve a copy on all parties. Such a document
3 should be captioned "Objections to Magistrate Judge's Findings and Recommendations."
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5 Any reply to the objections shall be served and filed within ten days after service of the
6 objections. The parties are advised that failure to file objections within the specified time
7 may waive the right to appeal the District Court's order. Martinez v. Y1 st, 951 F.2d 1153
8 (9th Cir. 1991).

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10 IT IS SO ORDERED.

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12 Dated: July 26, 2011

/s/ Michael J. Seng
13 UNITED STATES MAGISTRATE JUDGE
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