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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY R. TURNER,

Plaintiff,

No. 2: 10-cv-1848 MCE KJN P

vs.

WARDEN SALINAS, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding without counsel with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s motion for injunctive relief filed October 12, 2010. For the following reasons, the undersigned recommends that this motion be denied.

Legal Standard for Injunctive Relief

“The proper legal standard for preliminary injunctive relief requires a party to demonstrate ‘that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.’” Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009), quoting Winter v. Natural Res. Def. Council, Inc., 129 S.Ct. 365, 374 (2008).

A Ninth Circuit panel has found that post-Winter, this circuit’s sliding scale

1 approach or “serious questions” test survives “when applied as part of the four-element Winter  
2 test.” Alliance for Wild Rockies v. Cottrell, 2010 WL 3665149, at \* 5 (9th Cir. Sept. 22, 2010).  
3 “In other words, ‘serious questions going to the merits,’ and a hardship balance that tips sharply  
4 toward the plaintiff can support issuance of an injunction, assuming the other two elements of the  
5 Winter test are also met.” Id.

6 In cases brought by prisoners involving conditions of confinement, any  
7 preliminary injunction “must be narrowly drawn, extend no further than necessary to correct the  
8 harm the court finds requires preliminary relief, and be the least intrusive means necessary to  
9 correct the harm.” 18 U.S.C. § 3626(a)(2).

#### 10 Discussion

11 This action is proceeding on the amended complaint filed August 24, 2010, as to  
12 defendants Vertinelli, Hall and Colon.<sup>1</sup> The pending motion for injunctive relief is, basically, a  
13 restatement of the claims contained in the amended complaint, including those that were  
14 dismissed. Plaintiff may not seek injunctive relief regarding the claims that have been dismissed.  
15 Accordingly, the undersigned will only consider the motion for injunctive relief to the extent it  
16 concerns the claims on which this action is proceeding.

17 As in the amended complaint, plaintiff alleges that following his arrival at the  
18 Deuel Vocational Institution (“DVI”), defendant Vertinelli placed him in a lock-up unit from  
19 May 5, 2010, to June 9, 2010. As in the amended complaint, plaintiff alleges that defendant Hall  
20 retaliated against him for his legal activities. In particular, plaintiff alleges that from May 8,  
21 2010, to May 26, 2010, defendant Hall denied plaintiff access to daily showers. Plaintiff alleges  
22 that from May 5, 2010, to June 26, 2010, defendant Hall denied plaintiff access to personal mail.  
23 As in the amended complaint, plaintiff alleges that on June 25, 2010, defendant Colon slammed a

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25 <sup>1</sup> On September 7, 2010, the claims against the remaining defendants were dismissed  
26 with leave to amend. Plaintiff did not file a second amended complaint. Instead, plaintiff chose  
to proceed with the claims found colorable against defendants Vertinelli, Hall and Colon.


1 cell door on plaintiff.

2           The misconduct plaintiff complains of in the pending motion for injunctive relief  
3 occurred in May 2010 and June 2010. Plaintiff does not allege that he has been subjected to any  
4 more recent or ongoing harassment by these defendants. Under these circumstances, the  
5 undersigned finds that plaintiff has not demonstrated that he is likely to suffer irreparable harm in  
6 the absence of injunctive relief. On this ground, the motion for injunctive relief should be  
7 denied.

8           Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's motion for  
9 injunctive relief (Dkt. No. 22) be denied.

10           These findings and recommendations are submitted to the United States District  
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-  
12 one days after being served with these findings and recommendations, plaintiff may file written  
13 objections with the court. The document should be captioned "Objections to Magistrate Judge's  
14 Findings and Recommendations." Plaintiff is advised that failure to file objections within the  
15 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951  
16 F.2d 1153 (9th Cir. 1991).

17 DATED: October 28, 2010

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21 KENDALL J. NEWMAN  
22 UNITED STATES MAGISTRATE JUDGE

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