

1 physician's requests to provide Plaintiff a medically prescribed "no meat" diet (id. at 9-11).
2 In Count VIII, Plaintiff alleged that Defendant repeatedly denied three physicians' requests
3 to prescribe Plaintiff a vegetarian diet for his chronic gout (id. at 20). The Court dismissed
4 all other Counts at screening (Doc. 35).²

5 At the same time he filed his Second Amended Complaint, Plaintiff filed a Motion for
6 Preliminary Injunction, which is supported by a separate Memorandum of Law (Docs. 29,
7 30). Plaintiff seeks an Order directing Defendant and any persons acting in concert with him
8 to provide Plaintiff a "no meat" diet (Doc. 29). Plaintiff asserts that there is a reasonable
9 likelihood of success on the merits of his claim because his medical need is obvious; he states
10 that the lack of a proper diet has caused him to endure five operations for his chronic gout
11 (Doc. 30 at 2-3). Plaintiff contends that Defendant's failure to provide a proper medical diet
12 amounts to deliberate indifference and that indifference has caused Plaintiff to suffer
13 unnecessary pain (id. at 4; Doc. 29 at 2). Plaintiff further contends that there is a substantial
14 threat of irreparable harm given that he will continued to suffer serious physical injury
15 without a proper medical diet (Doc. 30 at 4-5). Plaintiff avers that in addition to the surgeries
16 he has had to undergo, he is now partially crippled and he may be forced to use a wheelchair
17 if his condition worsens (id. at 5). He submits that the threatened harm to him outweighs any
18 harm that an injunction may cause Defendant (id. at 7-8). Lastly, Plaintiff argues that the
19 public interest is served by an injunction that protects the constitutional rights "of all its
20 members" (id. at 8).

21 In its Screening Order, the Court directed Defendant to respond to Plaintiff's motion
22 (Doc. 35 at 13). In his response, Defendant states that since the filing of his motion,
23 Plaintiff's request for a vegan diet, which contains no meat or other animal-derived
24 ingredients, was approved and he began receiving a vegan diet in November 2011 (Doc. 46
25 at 2). Defendant's response is supported by the declaration of Chaplain Phillip Irby and a
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28 ²The Court did not dismiss Count I; however, because the only named Defendant in
Count I was a Doe Defendant, the Court did not direct service on the Doe Defendant (Doc.
35 at 7).

1 copy of the response to Plaintiff’s grievance appeal seeking a vegan diet (*id.*, Ex. A).
2 Because Plaintiff now receives the vegan diet, Defendant asks the Court to deny Plaintiff’s
3 injunctive request as moot (*id.* at 2).

4 In the alternative, Defendant argues that Plaintiff is not entitled to an injunction
5 because he failed to exhaust administrative remedies for his claim prior to filing his lawsuit
6 and he failed to make the requisite showing for injunctive relief (*id.* at 4-5).

7 Plaintiff did not file a reply.

8 **II. Preliminary Injunction**

9 **A. Legal Standard**

10 A preliminary injunction is an extraordinary and drastic remedy and “one that should
11 not be granted unless the movant, by a clear showing, carries the burden of persuasion.”
12 Mazurek v. Armstrong, 520 U.S. 968, 972 (1997) (per curiam) (quoting 11A C. Wright, A.
13 Miller, & M. Kane, Federal Practice and Procedure § 2948, pp. 129-130 (2d ed. 1995)). An
14 injunction may be granted only where the movant shows that “he is likely to succeed on the
15 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
16 the balance of equities tips in his favor, and that an injunction is in the public interest.”
17 Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); Am. Trucking Ass’n, Inc.
18 v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). The movant has the burden of
19 proof on each element of the test. Envntl. Council of Sacramento v. Slater, 184 F. Supp. 2d
20 1016, 1027 (E.D. Cal. 2000).

21 In attempting to establish either eligibility for an injunction or that a party is not
22 entitled to injunctive relief, the parties may rely on developments that postdate the pleadings
23 and pretrial motions. Farmer v. Brennan, 511 U.S. 825, 846 (1994).

24 **B. Analysis**

25 Defendant presents evidence showing that since filing his request for injunctive relief,
26 Plaintiff has received the very relief he sought in his motion (Doc. 46, Ex. A). In failing to
27 file a reply, Plaintiff does not dispute that he now receives the requested vegan diet.
28 Accordingly, Plaintiff’s motion for injunctive relief is moot and will be denied. See Farmer,

1 511 U.S. at 846.

2 **IT IS ORDERED that** the reference to the Magistrate Judge is **withdrawn** as to
3 Plaintiff's Motion for Preliminary Injunction (Doc. 29), and the Motion is **denied**.

4 DATED this 13th day of February, 2012.

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A. Murray Snow

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G. Murray Snow
United States District Judge

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