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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LEONARD FARLEY,

Plaintiff,

v.

DOCTOR E. CAPOT, et al.,

Defendants.

CASE NO. 1:06-cv-01760-LJO-MJS (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION BE
DENIED

(ECF No. 54)

OBJECTIONS DUE WITHIN THIRTY DAYS

_____ /

Plaintiff Leonard Farley ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The action is proceeding on Plaintiff's Amended Complaint filed August 28, 2007 (ECF No. 15). Plaintiff alleges Defendant Harold Tate violated Plaintiff's Eighth Amendment rights by demonstrating deliberate indifference to Plaintiff's serious medical needs.

On October 4, 2010, Plaintiff filed a motion for a preliminary injunction. (ECF No. 54.) Plaintiff's Motion requests that he be transferred from his current location, Folsom Prison, to either Vacaville Prison or California Men's Colony Prison where he will receive

1 “proper housing and medical care.” Plaintiff highlights exhibits attached to his motion to
2 support his argument that he will suffer irreparable harm if he continues to be held in his
3 current facility. (Pl.’s Mot. for Prelim. Inj., Ex. A - C; ECF No. 54, pp. 8-20.) Attachment
4 A to the motion is a summary of Plaintiff’s medical history, current conditions, treatment
5 options, and recommendations. It appears therefrom that Plaintiff has an abdominal tumor
6 and that trauma to the tumor area causes pain, bleeding, nausea, and vomiting. It is
7 recommended, among other things, that he avoid trauma to the abdomen and decrease
8 his activity level to prevent persistent trauma. However, the exhibits also reflect that
9 Plaintiff’s condition has remained stable on the current treatment regimen at his current
10 facility. Moreover, it also appears Plaintiff was given the option of moving to the Out-
11 Patient Housing unit in his current facility (on the recommendation of his primary care
12 physician), but Plaintiff apparently refused to be so moved.

15 Injunctive relief, whether temporary or permanent, is an “extraordinary remedy,
16 never awarded as of right.” Winter v. Natural Res. Defense Council, 129 S.Ct. 365, 376
17 (2008). “A plaintiff seeking a preliminary injunction must establish that he is likely to
18 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
19 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
20 the public interest.” Am. Trucking Ass’ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052
21 (9th Cir. 2009) (quoting Winter, 129 S.Ct. at 374). The standard for a permanent injunction
22 is essentially the same as for a preliminary injunction, with the exception that the plaintiff
23 must show actual success, rather than a likelihood of success. See Amoco Prod. Co. v.
24 Village of Gambell, 480 U.S. 531, 546 n. 12 (1987). However, the Ninth Circuit has
25 recently revived the “serious questions” sliding scale test, and ruled that a preliminary
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1 injunction may be appropriate when a plaintiff demonstrates serious questions going to the
2 merits and the balance of hardships tips sharply in plaintiff's favor. Alliance for the Wild
3 Rockies v. Cottrell, 622 F.3d 1045, 1052-53 (9th Cir. 2010).

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5 In cases brought by prisoners involving conditions of confinement, the Prison Relief
6 Reform Act (PLRA) requires that any preliminary injunction "must be narrowly drawn,
7 extend no further than necessary to correct the harm the court finds requires preliminary
8 relief, and be the least intrusive means necessary to correct the harm." 18 U.S.C. §
9 3626(a)(2). Moreover, where, as here, "a plaintiff seeks a mandatory preliminary injunction
10 that goes beyond maintaining the status quo pendente lite, 'courts should be extremely
11 cautious' about issuing a preliminary injunction and should not grant such relief unless the
12 facts and law clearly favor the plaintiff." Committee of Central American Refugees v.
13 I.N.S., 795 F.2d 1434, 1441 (9th Cir. 1986) (quoting Martin v. International Olympic
14 Committee, 740 F.2d 670, 675 (9th Cir. 1984)).

15
16 The Court finds that Plaintiff has failed to satisfy the prerequisites to injunctive relief.
17 Significantly, he has made no showing that he is likely to suffer irreparable harm if he is not
18 moved to one of the facilities he requests. Indeed, the evidence indicates his condition is
19 stable with the current treatment regimen at his current facility. There is no reason to
20 believe that his present facility is less capable of following medical recommendations than
21 another.

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23 Plaintiff has not shown a likelihood of success on the merits of his case. His Motion
24 barely references the instant action or the single remaining Defendant. Instead, Plaintiff
25 refers to a new grievance, new defendants, and the possibility of a new case. This
26 potential future action is irrelevant to the instant action.
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1 The Court also notes that granting Plaintiff's request to be transferred would disrupt,
2 not maintain, the status quo. His requested injunctive relief goes beyond any medical
3 recommendation and can not be said to be narrowly drawn. Lastly, Plaintiff does not
4 attempt to balance equities or the public interest.

5
6 In summary, the Court finds that Plaintiff has failed to meet his burden with respect
7 to the issuance of an injunction. Accordingly, the Court HEREBY RECOMMENDS that
8 Plaintiff's Motion for a Preliminary Injunction be DENIED.

9 These Findings and Recommendations will be submitted to the United States
10 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §
11 636(b)(1). Within thirty (30) days after being served with these Findings and
12 Recommendations, the parties may file written objections with the Court. The document
13 should be captioned "Objections to Magistrate Judge's Findings and Recommendations."
14 The parties are advised that failure to file objections within the specified time may waive
15 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153, 1157 (9th Cir.
16 1991). See also Robbins v. Carey, 481 F.3d 1143, 1146-47 (9th Cir. 2007).

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20 IT IS SO ORDERED.

21 Dated: December 5, 2010

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/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE