

1 **II. MOTION FOR INJUNCTIVE RELIEF**

2 In the February 7 Motion, Plaintiff alleges that prison officials (not Defendants) are
3 putting antipsychotic medication in his food.

4 In the April Motions¹, Plaintiff alleges an excessive use of force by Defendant Price
5 which occurred on March 30, 2011 and two other excessive use of force incidents by
6 different prison officials (not Defendants).
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8 **III. LEGAL STANDARDS**

9 A temporary restraining order (TRO) may be granted without written or oral notice
10 to the adverse party or that party's attorney only if: (1) it clearly appears from specific facts
11 shown by affidavit or by the verified complaint that immediate and irreparable injury, loss
12 or damage will result to the applicant before the adverse party or the party's attorney can
13 be heard in opposition, and (2) the applicant's attorney certifies in writing the efforts, if any,
14 which have been made to give notice and the reasons supporting the claim that notice
15 should not be required. See Fed. R. Civ. P. 65(b).
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17 The standards for a TRO are essentially the same as that for a preliminary
18 injunction. To be entitled to preliminary injunctive relief, a party must demonstrate "that he
19 is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence
20 of preliminary relief, that the balance of equities tips in his favor, and that an injunction is
21 in the public interest." Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009)
22 (citing Winter v. Natural Res. Def. Council, Inc., 129 S.Ct. 365, 374 (2008)). The Ninth
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26 ¹ The April 29, 2011 Motion is almost an exact replica of the April 14, 2011 Motion. The
27 arguments are exactly the same, word for word. There are additional attachments included with the April
14 Motion.

1 Circuit has also held that the “sliding scale” approach it applies to preliminary injunctions
2 as it relates to the showing a plaintiff must make regarding his chances of success on the
3 merits survives Winter and continues to be valid. Alliance for Wild Rockies v. Cottrell, 622
4 F.3d 1045, 1052-53 (9th Cir. 2010). Under this sliding scale, the elements of the
5 preliminary injunction test are balanced. As it relates to the merits analysis, a stronger
6 showing of irreparable harm to plaintiff might offset a lesser showing of likelihood of
7 success on the merits. Id.

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

14 **IV. ANALYSIS**

15 In the February Motion, Plaintiff makes allegations against individuals tainting his
16 food. Neither the individuals named in that Motion nor the allegations against them are
17 included in this action. In the April Motions, Plaintiff makes allegations against Defendant
18 Price and other prison officials about using excessive force. Neither the other prison
19 officials nor the use of excessive force are included in this action.

21 The Court finds that, at this stage in the proceedings, Plaintiff fails to meet the legal
22 standards required to be granted injunctive relief. To succeed on such motion, Plaintiff
23 must establish that he is likely to succeed on the merits, that he is likely to suffer
24 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
25 favor, and that an injunction is in the public interest. Plaintiff has not addressed any of the
26 legal requirements to meet the standard. He does not state anything about the merits of
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1 this action, does not refer to any irreparable harm, the balance of equities, or the public
2 good.

3 Furthermore, any relief granted by the Court regarding these allegations would not
4 remedy any of the claims upon which this action proceeds. Therefore, the Court lacks
5 jurisdiction to issue the order sought by Plaintiff.
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7 **V. CONCLUSION**

8 Based on the foregoing, the Court HEREBY RECOMMENDS that Plaintiff's Motions
9 for Temporary Restraining Orders and Preliminary Injunctions be DENIED.

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

17 IT IS SO ORDERED.
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19 Dated: July 14, 2011

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21 UNITED STATES MAGISTRATE JUDGE
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