

1 I.

2 DISCUSSION

3 The analysis for a temporary restraining order is substantially identical to that for a preliminary
4 injunction, Stuhlbarg Intern. Sales Co., Inc. v. John D. Brush and Co., Inc., 240 F.3d 832, 839 n.7 (9th
5 Cir. 2001), and “[a] preliminary injunction is an extraordinary remedy never awarded as of right.”
6 Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 24 (2008) (citation omitted). “A
7 plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that
8 he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities
9 tips in his favor, and that an injunction is in the public interest.” Id. at 20 (citations omitted). An
10 injunction may only be awarded upon a clear showing that the plaintiff is entitled to relief. Id. at 22
11 (citation omitted) (emphasis added).

12 In cases brought by prisoners involving conditions of confinement, any preliminary injunction
13 must be narrowly drawn, extend no further than necessary to correct the harm the Court finds requires
14 preliminary relief, and be the least intrusive means necessary to correct the harm. 18 U.S.C. §
15 3626(a)(2).

16 The determination of whether Defendants were deliberately indifferent to Plaintiff relating to
17 his exposure to Valley Fever and arsenic tainted water are disputed issues of fact that are the pivotal
18 point of Plaintiff’s claims. “In deciding a motion for a preliminary injunction, the district court is not
19 bound to decide doubtful and difficult questions of law or disputed questions of fact.” Int’l Molder &
20 Allied Workers Local Union No. 164 v. Nelson, 799 F.2d 547, 551 (9th Cir. 1986). Certainly at this
21 point in the action based on the limited record, the Court cannot resolve the factual dispute, and
22 Plaintiff has not demonstrated a likelihood of success on the merits. Indeed, it is noteworthy that the
23 relief Plaintiff is requesting is extensive and would require a very intrusive order concerning the
24 provision of medical care and placement of inmates within the California Department of Corrections
25 and Rehabilitation.

26 In addition, although the claims in this action are similar to those raised in the present motions,
27 Plaintiff has not met the standard of showing irreparable harm. Plaintiff’s allegations in the present
28 motion are based on his claim that he is at high risk of contraction of Valley Fever because he suffers

1 from Hepatitis C and is presently housed at Kern Valley State Prison where Valley Fever is endemic.
2 See City of Los Angeles v. Lyons, 461 U.S. 95, 101-102 (1983) (plaintiff must show “real and
3 immediate” threat of injury, and “[p]ast exposure to illegal conduct does not in itself show a present
4 case or controversy regarding injunctive relief If unaccompanied by any continuing, present,
5 adverse effects.”). Plaintiff has not alleged an immediate threatened injury. Los Angeles Memorial
6 Coliseum Comm’n v. Nat’l Football League, 634 F.2d 1197, 1201 (9th Cir. 1980).

7 Even if Plaintiff could show that the balance of hardship tips in his favor, this factor alone,
8 absent a showing of likelihood of success on the merits and irreparable injury, is insufficient to
9 warrant imposition of a temporary restraining order.

10 Although it is in the public interest to ensure an inmate’s safety while housed in a state facility,
11 in this instance, the record presently does not support the finding that a temporary restraining order is
12 justified to ensure such public interest. Accordingly, Plaintiff’s motion for a temporary restraining
13 order should be denied.

14 II.

15 RECOMMENDATION

16 Based on the foregoing, IT IS HEREBY RECOMMENDED that Plaintiff’s motions for a
17 temporary restraining order and preliminary injunction be DENIED.

18 This Findings and Recommendation will be submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**
20 after being served with this Findings and Recommendation, Plaintiff may file written objections with
21 the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
22 Recommendation.” Plaintiff is advised that failure to file objections within the specified time may

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result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: April 23, 2015


UNITED STATES MAGISTRATE JUDGE