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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SPENCER E. BERRY,
Plaintiff,
v.
HARRINGTON, et al.,
Defendants.

Case No. 1:15-cv-01134-LJO-SKO (PC)
**ORDER DENYING MOTIONS FOR
PRELIMINARY INJUNCTION**
(Docs. 13 and 14)

I. Background

Plaintiff Spencer E. Berry (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on July 13, 2015. On October 15, 2015, Plaintiff filed a motion seeking a preliminary injunction and on November 16, 2015, Plaintiff filed a motion requesting a ruling and asserting his continued need for relief. For the reasons that follow, Plaintiff’s motions are denied.

II. Legal Standard

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24, 129 S.Ct. 365 (2008) (citation omitted). “A plaintiff seeking a preliminary injunction must establish 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.” *Id.* at 20

1 (citations omitted). An injunction may only be awarded upon a *clear showing* that the plaintiff is
2 entitled to relief. *Id.* at 22 (citation omitted) (emphasis added).

3 In addition, any award of equitable relief is governed by the Prison Litigation Reform Act,
4 which provides in relevant part, “Prospective relief in any civil action with respect to prison
5 conditions shall extend no further than necessary to correct the violation of the Federal right of a
6 particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless
7 the court finds that such relief is narrowly drawn, extends no further than necessary to correct the
8 violation of the Federal right, and is the least intrusive means necessary to correct the violation of
9 the Federal right.” 18 U.S.C. § 3626(a)(1)(A).

10 **III. Discussion**

11 **A. Plaintiff’s Allegations**

12 This action arises from events which occurred at California Correctional Institution
13 (“CCI”) in Tehachapi in 2014 and early 2015. The crux of Plaintiff’s claims is that Dr. Harold
14 Tate, his primary care physician at CCI, violated his rights under the Eighth Amendment by
15 failing to provide appropriate medical care for Plaintiff’s chronic pain issue. Plaintiff disagreed
16 with the course of treatment prescribed by Dr. Tate and he contends that when he complained, Dr.
17 Tate retaliated against him by ordering his medication be crushed and floated. In addition, Dr.
18 Tate allegedly terminated a meeting with Plaintiff.

19 Plaintiff is now incarcerated at California State Prison-Corcoran (“CSP-Corcoran”) and the
20 preliminary injunction he seeks relates to his current medical treatment at that prison. Plaintiff had
21 a Telemed appointment for an upper back issue on October 2, 2015, and he contends that a
22 medical technical assistant interfered with the outside physician’s chosen course of treatment by
23 rejecting the first three medications the physician wanted to prescribe, apparently on the basis that
24 they were not on the prison’s formulary list. However, the medication ultimately prescribed,
25 amitriptyline, is also non-formulary and Plaintiff was informed that it would have to be approved
26 by upper management. Plaintiff contends that he is in significant pain and prison officials are
27 interfering with his outside provider’s recommended treatment by failing to provide him with the
28 medication that was prescribed on October 2, 2015.

